Keep Hayward Clean And Green Task Force

Hayward City Hall, Room 2A
Regular Meeting - 7:00 PM
March 8, 2007

Agenda

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Public Comments (*The Public Comments section provides an opportunity to address the Task Force on items not listed on the agenda. The Task Force welcomes your comments and requests that speakers present their remarks in a respectful manner, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Task Force is prohibited by State law from discussing items not listed on the agenda, your item will be taken into consideration, and may be referred to staff.)*
5. Review of Conflict of Interest and Brown Act Principles
6. Notes from Priority-setting Session on 2/22/07
7. Task Force Leadership
8. Task Force Structure
9. Graffiti Prevention, Response and Abatement Services in Hayward
10. Waste Collection & Recycling Services in Hayward
11. Next Meeting: March 22
12. Adjournment

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request accommodation at least 48 hours in advance of the meeting by contacting the City Manager's Office at (510) 583-4300.

CITY OF HAYWARD AGENDA REPORT

Meeting Date 3/8/07
Agenda Item 5

TO: Keep Hayward Clean and Green Task Force

FROM: City Attorney

SUBJECT: Review of Legal Principles relating to Conflicts of Interest and the Brown Act.

Recommendation:

It is recommended that the Keep Hayward Clean and Green Task Force review the following information.

Discussion:

This report presents a broad overview of relevant conflict of interest regulations. In addition, in keeping with the City's strong commitment to the principles of open government, as well as the Alameda County Grand Jury's recommendation for periodic Brown Act updates, this report is presented to review the Brown Act.

Conflicts of Interest

Public officials, including members of the Keep Hayward Clean and Green Task Force, are governed by several different conflict-of-interest laws. The most comprehensive conflict of interest rules have been promulgated by the Fair Political Practices Commission (FPPC) and derive from the California Political Reform Act. There are also laws prohibiting a government official from approving a contract with the public agency in which the official has a financial interest. Common law conflict of interest rules also preclude a public official from acting in a manner that creates an appearance of impropriety.

The FPPC conflict-of-interest analysis involves answering a series of questions:

(1) Are you a public official?
(2) Are you making, influencing or participating in a governmental decision?
(3) What are your economic interests?
(4) Are your economic interests directly or indirectly involved in the governmental decision?
(5) Are your economic interests material?
(6) Is it reasonably foreseeable that the materiality standard will be met by the governmental decision?
(7) If you have a conflict of interest, does the "public generally" exception apply?
(8) If you have a disqualifying conflict of interest, is your participation legally required?

Members of the Task Force are considered public officials under the FPPC. For purposes of this discussion the most important questions are questions number 3, 4, 5 and 6. A few examples of economic interests include real property (owned or leased), businesses, investments, gifts, salaries and other sources of income belonging to you <u>or your immediate family</u>. With the exception of real property, an economic interest is directly involved if it is the subject of the governmental decision; otherwise it is indirectly involved. Generally speaking, real property that is within 500 feet from the property that is the subject of the governmental decsion is considered "directly involved" and the financial effect of the decision is presumed to be material. If the real property is more than 500 feet from the property that is the subject of the governmental decision, then the financial effect of the decision is presumed to be immaterial. For example, if the Task Force is making a recommendation that the City take action regarding a specific property and that property is within 500 feet of the member's property, then that member may have to recuse himself or herself. The tests for materiality for other types of economic interests are very complicated and require review on a case-by-case basis.

Once the public official determines that a conflict of interest exists, the public official must publicly identify the economic interest involved, including specific details about the economic interests. For real property, this means the location of the real property, unless it is the public official's residence; in that case, the official should state that the property involved is his or her residence. This disclosure must be done after the announcement of the agenda item but before discussion of the item. The public official must then immediately leave the room.

An overview of conflicts regulations prepared by the FPPC is attached. Violations of the Political Reform Act may result in fines and/or criminal, civil or administrative proceedings. As the conflict of interest analysis is both factually and legally intensive, it is always wise to consult with the City Attorney's office in advance so that a thorough review can be conducted.

<u>Ralph M. Brown Act</u>

The Ralph M. Brown Act ("Brown Act") is California's "sunshine" law for local governments. Based upon state policy that the people must be informed so that they can maintain oversight of the government, the Brown Act requires that all meetings of the legislative body of a local agency be

open and public, and that all persons be permitted to attend any meeting of the legislative body of a local agency, unless an exception exists.

Meetings: Under the Brown Act, a meeting is any congregation of a majority of the members of a legislative body at the same time and the same place to hear, discuss or deliberate on any item that is within the subject matter jurisdiction of the local agency. All deliberations during a meeting of the legislative body must be conducted in open session. The Brown Act does not limit individual contacts between a member of the legislative body and any other person, except in the context of "serial meetings", which are discussed below. The Brown Act also permits the majority to attend a social gathering, provided that agency business of a specific nature is not discussed.

Under the Brown Act, the public has a right to address the Task Force at any meeting on any topic that is within the Task Force's subject matter jurisdiction. However, a Task Force meeting is considered a "limited public forum." As such, the Task Force has the authority to limit speech through the imposition of agendas and rules of order and decorum. The regulations on public comment must be reasonable. Any restrictions upon public comment at Task Force meetings must not be too broad and must not constitute prior restraints. A legislative body may prohibit a member of the public from speaking on a matter that is not within the legislative body's subject matter jurisdiction.

Discussing Items Not On The Agenda: While the Brown Act generally prohibits acting on or discussing items not on the posted agenda, it allows the Task Force to do any of the following:

- Briefly respond to statements made or questions posed by persons exercising their public comment rights.
- Ask a question of staff or the speaker for clarification.
- Make a brief announcement.
- Make a brief report on his or her own activities.
- Provide a reference to staff for factual information.
- Request staff to report back to the Task Force on any matter.
- Take action to direct staff to place a matter of business on a future agenda.

While neither the legislature nor the courts have provided guidance on what a "brief" statement, comment, announcement or report may be, discretion would seem to dictate that they be able to be completed within a few minutes. Caution should be used to avoid any discussion or action on an item that has not been agendized.

Technological Communications and Serial Meetings: The Brown Act applies to all meetings of the

legislative body. One of the most frequently asked questions about the Brown Act involves serial meetings. The serial meeting may be a "daisy-chain" style meeting in which one member contacts another member and that member contacts a third member who then contacts a fourth member, etc., until a quorum and collective concurrence has been reached. Another type of serial meeting is the hub-and-spoke meeting in which one member contacts all other members. It is also possible for staff to become conduits, creating serial meetings. If a collective concurrence results from the participation of a quorum of the legislative body, then a serial meeting in violation of the Brown Act has occurred. Communications among a majority of the Task Force members through e-mail or by telephone may result in a "meeting" for purposes of the Brown Act.

Remedies for Brown Act Violations: The District Attorney or any interested person can file a civil action to compel a local agency to comply with the Brown Act. Persons who wish to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions. An interested person who successfully invalidates a legislative body's action can recover attorney's fees and costs from the local agency (not the individual members). However, a violation of the Brown Act by a member of the legislative body who acts with improper intent is punishable as a misdemeanor. The member must intend to deprive the public of information to which the member knows or has reason to know the public is entitled in order to be found guilty of a misdemeanor.

Recommended by:

Maureen Conneely
Assistant City Attorney

Attachments:

FPPC Overview of Conflicts Laws
User's Guide to the Brown Act

Can I vote?

A Basic Overview Of Public Officials' Obligations Under the Political Reform Act's Conflict-of-Interest Rules

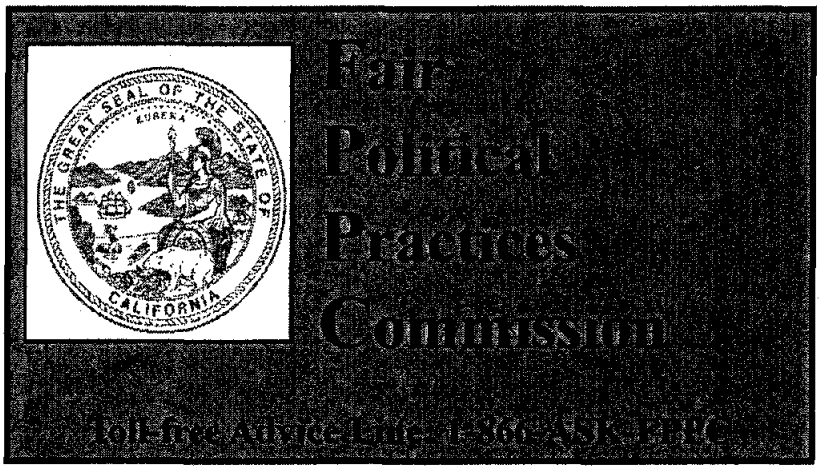
California
Fair Political
Practices
Commission

"My home is near the proposed new shopping mall. Can I vote on the issue at next month's Planning Commission meeting?"

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act's conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the "big picture" level and to help guide you to more detailed resources.

Stripped of legal jargon:

➢You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that



the outcome of the decision will have an important impact on your economic interests, **and**

➢a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act "on general principles" or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note

Although you should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, http://www.fppc.ca.gov. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — 1-866-ASK-FPPC — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

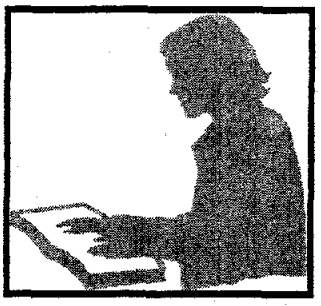
Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide



Step One: Are you a "public official" within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the "public generally" exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a "public official," within the meaning of the rules?

The Act's conflict-of-interest rules apply to "public officials" as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency's conflict-of-interest code, you are a "public official." If you file a Statement of Economic Interests (Form 700) each year, you are a "public official" under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency's legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- ***Make*** a governmental decision (for example, by voting or making an appointment).
- ***Participate*** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- ***Influence*** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at http://www.fppc.ca.gov.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.

- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.

— Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she ***may not*** *sit in the public area and listen to the discussion.*

— Supervisor Robertson rents a home to a county employee. The county employee is the sub-

ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session ***but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.*** *He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more.

- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested $2,000 or more, and also in certain leasehold interests.

> *The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise.*

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) $500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent of more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.

- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total $390 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** *You have an economic* interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the "personal financial effects" rule. If these expenses, income, assets or liabilities are likely to go up or down by $250 or more in a 12-month period as a result of the governmental decision, then the decision has a "personal financial effect" on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the *economic interest* that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.

Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC's web site, http://www.fppc.ca.gov.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

"Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

—California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.

- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.

- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.

- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a $20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does "sufficiently likely" mean? Put another way, how "likely" is "likely enough?" The Political Reform Act uses the words "reasonably foreseeable." The FPPC has interpreted these words to mean "substantially likely." Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

"Public Generally" Exception

Step Seven — If you have a conflict of interest, does the "public generally" exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the "public generally" exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The "public generally" exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the "public generally" exception can be found on the FPPC website at http://www.fppc.ca.gov under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

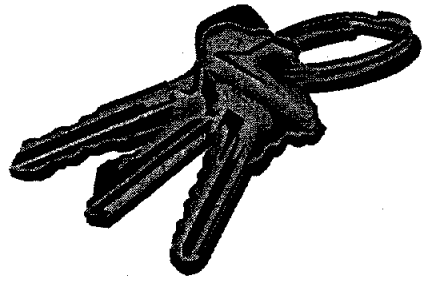
Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act's conflict-of-interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.

- Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.

- Understand the "big picture" of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.



- Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.

- Don't try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the "big picture." You'll then be able to look up or ask about the particular rules you need to apply to any given case.

- Don't be afraid to ask for advice. It is available from your agency's legal counsel and from the FPPC.

How To Contact Us:

Mail:
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Website:
www.fppc.ca.gov

Telephone:
Toll-free advice line:
1-866-ASK-FPPC
(1-866-275-3772)
Regular line: 1-916-322-5660
Enforcement hot-line:
1-800-561-1861

Fair Political Practices Commission

A user's guide to the Ralph M. Brown Act

"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 . . ."

OPEN & PUBLIC III

OPEN & PUBLIC III

A USER'S GUIDE TO THE
RALPH M. BROWN ACT

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FOREWORD

This guide is a joint project of organizations that represent diverse views and constituencies—but share a common interest in the open meeting laws for local governments.

One goal with this publication is to put the Ralph M. Brown Act in lay language, so it can be readily understood by local officials, by the public and by the news media.

Another goal is to identify problem areas in an effort to reduce controversy over the Act. As a consequence, we have tried not only to cover all aspects of the Act, but to also pay extra suggestions on how to minimize potential problems; these are primarily practical ways for officials to stay out of hot water.

However, this guide is not intended to provide legal advice, and it should not be taken as a legal standard by which to judge the propriety of official conduct. We are confident that no court would lend it such authority, and it is only in that confidence that the guide has been ventured as a common project.

A public agency's legal counsel is responsible for advising its staff, board or council on Brown Act requirements and prohibitions, and should always be consulted when issues arise.

To lessen confusion, we have adopted a format in which:

- Most text will look like this.
- *But suggestions will be italicized.(I)*
- And for hypothetical examples, the typeface will look like this. (T)

ACKNOWLEDGEMENTS

The League thanks the following attorneys for their work on this update to the original guide. The League also thanks the organizations listed on the back cover for their contributions.

Michael Jenkins, Chair of Open and Public Revision Committee
City Attorney, Diamond Bar, Hermosa Beach, Rolling Hills and West Hollywood
Richards, Watson & Gershon, Los Angeles

Valerie J. Armento
City Attorney, Sunnyvale

Ariel Pierre Calonne
City Attorney, Palo Alto

Sonia Rubio Carvalho
City Attorney, Colton and Azusa
Best, Best & Krieger, Riverside

Debra E. Corbett
City Attorney, Tracy

Gary Gillig
City Attorney, Oxnard

Daniel S. Hentschke
General Counsel
San Diego County Water Authority, San Diego

Joyce Hicks
Assistant City Attorney, Oakland

Scott C. Smith
City Attorney, Santee
Best, Best & Krieger, San Diego

Gabrielle Whelan
Deputy City Attorney, Livermore

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"THE PEOPLE DO NOT YIELD THEIR SOVEREIGNTY"

In late 1951, San Francisco Chronicle reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June of 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted a bill and Modesto Assemblyman Ralph M. Brown agreed to carry it. The bill passed the Legislature and was signed into law in 1953 by Governor Earl Warren.

The Ralph M. Brown Act (the "Brown Act"), as it is known, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Ralph Brown served in the Assembly for 19 years starting in 1942, the last three years as its Speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

The basic law

Two key parts of the Brown Act have not changed since its passage. One is the intent section with which it begins:

"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 their 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."[1]

Not all intent language in statutes has an impact on the judiciary. But the courts have leaned on the intent section of the Brown Act to narrowly construe exceptions to the law and liberally construe provisions, which further openness and access.[2]

That opening is the soul of the Brown Act. Its heart comes later, a section that declares:

"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."[3]

That one sentence is by far the most important of the entire Brown Act, and it is the basis for the next five chapters.

Change and expansion

Although these two key provisions have remained intact, very little else in the Brown Act has. Changes have been adopted in numerous sessions of the Legislature. Examples include requirements for agendas and public notice, creation of new exceptions, and addition of a mechanism to invalidate certain actions if the Brown Act has been violated.

Over the years, a number of appellate court decisions and Attorney General Opinions have interpreted key elements of the Brown Act, such as what constitutes a "meeting." In 1994, many of these holdings were enacted into law. In addition, the 1994 changes extensively revised provisions about sessions that can be closed to the public.

The Brown Act now covers virtually every type of local government body, elected or appointed, decision-making or advisory, permanent or temporary. Even some types of private organizations are covered.

Similarly, meetings subject to the Brown Act are not limited to formal gatherings. They also include any communication or device by which a majority develops "a collective concurrence as to action to be taken."

Limitations

Except for closed sessions, the Brown Act requires all aspects of the decision-making process by legislative bodies—including discussion, debate and acquisition of information—to be conducted in public.

But the law is limited to multi-member government bodies, and only they can violate its provisions. The Brown Act does not apply to individual decision-makers. It also exempts *ad hoc* advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body. The law does not restrict local agency staff or employees except to the extent that they act as a conduit for collective action or discussion by the members.

The law on the one hand recognizes the need of individual legislators to meet and discuss matters with their constituents. On the other hand, it requires—with certain specific exceptions to protect the community and preserve individual rights—that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

California has concluded more is to be gained than lost by the public meeting process.

The Brown Act allows a legislative body to adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech. Otherwise, individual citizens, lobbyists, and members of the news media possess the right to attend, broadcast and participate in public meetings.

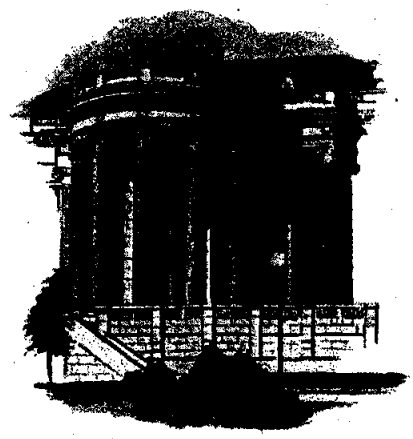
Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media members often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that the closed sessions are being misused.

Public officials,[4] on the other hand, complain that the Brown Act makes it difficult to respond to constituents, and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act unnatural. The techniques that serve so well in business—the working lunch, the private lobbying and compromises, the slow evolution of a project or decision—are no longer possible. Closed meetings can be more efficient; they eliminate grandstanding and promote candor.

As a matter of public policy, California has concluded more is to be gained than lost by the public meeting process. Government behind closed doors may well be efficient and business-like. But invisible government is often unresponsive. It is invariably distrusted.

The Brown Act has without question had a major impact on the way public bodies conduct business. Closed door meetings are now the exception.



Notes

1. California Government Code section 54950
2. In reviewing these endnotes, keep in mind that the Brown Act itself has the greatest force and effect. Next in order are appellate court decisions, which interpret the Brown Act and if published serve as precedent for trial courts. Published opinions of the Attorney General do not have the force of law but are persuasive to the courts; letter opinions of the Attorney General are usually narrower in scope and less influential.
3. California Government Code section 54953(a)

Chapter 2: Meetings

"ALL MEETINGS OF . . ."

For most of its history, the Brown Act referred to various kinds of meetings but deferred to the courts and the California Attorney General to determine whether a particular gathering was a "meeting." That ended in 1994, when the term "meeting" was first defined in the Brown Act. There was no change in the clear distinction between a legislative body member's contacts with individuals on the one hand and collective gatherings of a legislative body majority on the other hand. With few exceptions, the Brown Act applies only to collective gatherings.

Specifically, the Brown Act defines a meeting as:

". . . any 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 that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."[1]

Thus, the term "meeting" is not limited to gatherings at which action is taken but also includes deliberative gatherings as well.

Except for teleconferencing discussed below, the Brown Act specifically prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body."[2]

After the above very inclusive language, the Brown Act creates six exceptions:[3]

♦ INDIVIDUAL CONTACTS

The first exception is individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff or a colleague.

Individual contacts, however, cannot be used to do by stages what cannot be done in one step. For example, a series of individual contacts that leads to a "collective concurrence" is prohibited. Such serial meetings are discussed below.

♦ CONFERENCES

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college and other local agency officials, so long as those meetings are open to the public. A majority of members, however, cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

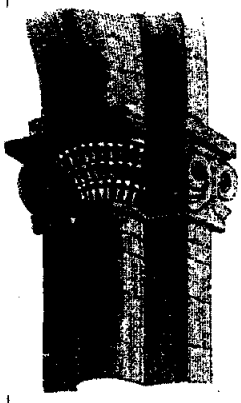
♦ COMMUNITY MEETINGS

The third exception allows a legislative body majority to attend an open and publicized meeting organized by another organization to address a topic of local community concern. Again, a majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates night if the meetings are open to the public.

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.

"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if the majority engages in a collective deliberation process outside a scheduled meeting of the body. In the above example, a discussion by the majority encouraging citizen input on the issues would be permissible. A majority discussion about each member's support of or opposition to such an ordinance would violate the Brown Act.



The term "meeting" is not limited to gatherings at which action taken but also includes deliberative gatherings.

♦ OTHER LEGISLATIVE BODIES

In 1997 the fourth exception was expanded to allow a legislative body majority to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.[4] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council majority to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business.

In response to a 1996 opinion of the Attorney General, the Legislature created a fifth exception. That exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body provided that the legislative body members who are not members of the standing committee attend only as observers,[5] meaning that they cannot speak or otherwise participate in the meeting.

♦ SOCIAL OR CEREMONIAL EVENTS

Finally, an exception permits a legislative body majority to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the local agency.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception or farewell. The test is not whether a majority attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

A hub-and-spoke process in which a chief executive briefs board members prior to a formal meeting and reveals information about the members respective views violates the Brown Act.

Collective briefings

None of these six exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings involving a majority of the body in the same place and time must be open to the public and satisfy the notice and agenda requirements of meetings.

Retreats or workshops of legislative bodies

Formerly, there was disagreement among local agency attorneys whether the Brown Act applied to retreats or workshops of legislative bodies. The consensus today is that such gatherings by a majority of legislative body members are covered. This is the case whether the retreat or workshop focuses on long-range agency planning, discussion of critical local issues or on team building and group dynamics.[6]

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

There may be nothing improper about the substance of a serial meeting. The problem is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision making.

The serial meeting may be a daisy-chain in which Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. A hub-and-spoke process in which, for example, a local agency attorney (the hub) telephones members of a redevelopment agency (the spokes) one by one for a decision on a proposed action,[7] or in which a chief executive briefs board members prior to a formal meeting and, in the process, reveals information about the members respective views, also violates the Brown Act.

A member has the right, if not the duty, to meet with constituents to address their grievances. That member also has the right to confer with a colleague about local agency business. But if in that process a "collective concurrence as to action to be taken" is reached among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.[8]

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[9] Such a memo, however, may be a public record.[10]

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

Well, I dunno," replied Board Member Adams. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Baker and Charles lined up and another vote leaning. With you I'd be over the top..."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has done anything wrong. But the board member may have violated the Brown Act by hearing about the positions of other board members. The prudent course is to try to stop lobbyists, staff and news media from revealing such positions of others.

The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items.

"Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."

The Brown Act may or may not prohibit such briefings. The Attorney General concludes that staff briefings are per se illegal.[11] *That point of view notwithstanding, the consensus among local agency attorneys is that staff briefings of legislative body members are allowed if staff is not used as a conduit for achieving collective concurrence, and if during the briefing staff does not disclose the views and positions of other members. Members should be cautious about discussions about local agency business with developers, advocates, or opponents and proponents on issues if such discussions could achieve a collective concurrence.*

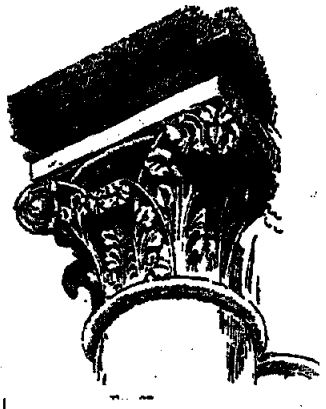
"Thanks for the information," said Council Member Smith. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the member should not answer. A one-on-one meeting that involves a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.

INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted are meetings under the Brown Act.[12] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.



Thursday, 11:30 a.m. As they did every week, the board of directors of Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they nothing to hide. Whenever he could, the managing editor of the weekly newspsper down the street hurried over to join the board...

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues. But it is the kind of situation that should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Technological conferencing

The Brown Act has been amended in 1994, 1997 and 1998 to allow local agencies to use information age technologies to conduct meetings.[13]

The Brown Act has been amended to allow local agencies to use information age technologies to conduct meetings.

The Brown Act now specifically allows a legislative body to use any type of teleconferencing to receive public comment, testimony, to deliberate or conduct a closed session.[14]

"Teleconference" is defined as "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."[15] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:[16]

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body shall participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.

- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location.
- Each teleconference location must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

The use of teleconferencing to conduct a legislative body meeting presents a variety of new issues beyond the scope of this booklet to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[17]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party.
- Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.
- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or at its principal office if that office is located outside the territory over which the agency has jurisdiction.
- Meet with elected or appointed federal or California officials 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.
- Meet 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.
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[18]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[19] A board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[20]

Finally, if a fire, flood, earthquake or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media which have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[21]

Notes:

1. California Government Code section 54952.2(a)
2. California Government Code section 54952.2(b)
3. California Government Code section 54952.2(c)
4. California Government Code section 54952.2(c)(4)
5. California Government Code section 54952.2(c)(6)
6. "The Brown Act" California Attorney General, 1994, p. 9
7. *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95, 214 Cal. Rptr. 561
8. *Common Cause v. Stirling* (1983) 147 Cal. App. 3d 518, 195 Cal. Rptr. 163
9. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
10. California Government Code section 54957.5(a)
11. "The Brown Act" California Attorney General, 1994, p.12
12. California Government Code section 54952.2; 43 Op. Cal. Att'y Gen. 36 (1964)
13. California Government Code section 54953(b)
14. California Government Code section 54953(b)(1)
15. California Government Code section 54953(b)(4)
16. California Government Code section 54953
17. California Government Code section 54954(b)
18. California Government Code section 54954(b)(1)-(7)
19. California Government Code section 54954(c)
20. California Government Code section 54954(d)
21. California Government Code section 54954(e)

"...THE LEGISLATIVE BODY OF A LOCAL AGENCY..."

What is the "...legislative body of a local agency...?"

The Brown Act defines "legislative body" broadly[1] to include:

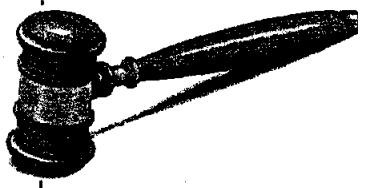
- The governing body of a local agency or any other local body created by state or federal statute, such as an air pollution control district or housing authority.[2]
- Advisory committees, such planning commissions and other subsidiary bodies. Also covered are citizen volunteer groups, task forces, and "blue ribbon committees" created by formal action of the governing body. However, there is an exception for advisory committees consisting solely of less than a quorum of the legislative body (see discussion under "What is not a 'legislative body' for purposes of the Brown Act?" below).[3]

A subset of the advisory committee is the "unitary" body. The less-than-a-quorum exception for advisory committees can be used by two or more bodies to create an entirely separate advisory group—which may or may not be subject to the Brown Act.

In one case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a "unitary body" subject to the Brown Act. Had the two committees remained separate, and met only to exchange information, they would have been exempt from the Brown Act.[4] (See discussion of *ad hoc* committees below.)

The prudent assumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- Standing committees, which have either: 1) a continuing subject matter jurisdiction or 2) a meeting fixed by charter, ordinance, resolution, or other formal action of the legislative body.[5] Standing committees comprised of less than a quorum of the governing body are covered by the Brown Act. For example, if a governing body creates long-term committees on budget and finance, or public safety, those are standing committees subject to the Brown Act.
- Any private organization 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 or entity is covered.[6] This includes nonprofit corporations created by local agencies. However, if a local agency contracts with a private firm for a service (for example, data processing or providing food services), the private firm is not covered by the Brown Act. Other private organizations receiving public funds are subject to the Brown Act if two elements are present: (1) receipt of public money from a local agency and (2) the presence on the organization's governing body of a member of the legislative body appointed as a full voting member by the local agency.[7] However, if a member of a legislative body sits on the board of a private organization as a private citizen rather than in his or her official capacity, the board will not be subject to the Brown Act.[8]



Suppose a chamber of commerce is funded in part by a city and the mayor sits on the chamber's board of directors. If the mayor was appointed to that position by the city council, the chamber is subject to the Brown Act and must hold open and public meetings. If the chamber independently appoints the mayor to its governing board, or if the mayor attends chamber meetings only in an advisory capacity, the chamber is probably not subject to the Brown Act.

Another is an auxiliary organization created to run a community college bookstore or cafeteria. (However, if the college *contracts* with a private firm to operate its bookstore or provide food services, the firm is not covered by the Brown Act.

- Special district hospital boards. A lessee assuming "material authority" over a special district hospital is not covered by the Brown Act.[9] However, this provision only applies to leases created after January 1, 1994.
- Newly elected members of legislative bodies.

Individual decision makers are not covered by the Brown Act.

In 1994, the Brown Act was extended to cover newly-elected members of legislative bodies who have not yet assumed office.[10] This amendment requires newly elected individuals to conform their conduct to the requirements of the Brown Act. For purposes of enforcement, these persons are to be treated as if already in office. Thus, meetings between incumbents and newly-elected members could constitute a majority subject to the Brown Act. Even a meeting between two outgoing members and their successors would violate the law.

What is not a "legislative body" for purposes of the Brown Act?

- An *ad hoc*, advisory committee composed solely of less than a quorum of the legislative body is exempted from the Brown Act.[11] The exception covers advisory committees that are *ad hoc* in nature — meaning that they serve a limited or single purpose, are not perpetual, and are to be dissolved once their specific task is completed. An example would be an advisory committee composed of less than a quorum created to interview candidates for a vacant position.

It can be difficult to determine whether a committee falls into the category of a standing committee or an exempt ad hoc committee. Suppose a subcommittee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration? Is it a standing committee or an exempt ad hoc committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the group persists long enough to have "continuing jurisdiction."

- Committees not created by formal action of the legislative body are not covered. For example, groups advisory to a single decision-maker appointed by a city manager or single city council member or otherwise not created by formal action of the legislative body are not covered by the Brown Act.[12] It is thus possible that a committee advising to a county superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the county board of education, would be covered.[13]
- Individual decision makers are not covered by the Brown Act. For example, an employee's administrative hearing with a manager regarding discipline is not a meeting.[14]
- County central committees of political parties are also not Brown Act bodies.[15]

Notes

1. California Government Code sections 54951 and 54952; *Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545, 152 Cal. Rptr. 506
2. California Government Code section 54952(a)
3. California Government Code section 54952(b); 79 Op. Cal. Att'y Gen. 69 (1996)
4. *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 178 Cal. Rptr.299
5. California Government Code section 54952(b)
6. California Government Code section 54952(c)(1)(A)
7. California Government Code section 54952(c)(1)(B); *see also International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App. 4th 287, 81 Cal. Rptr. 2d 456
8. 67 Op. Cal. Att'y Gen. 487 (1984)
9. California Government Code section 54952(d)
10. California Government Code section 54952.1
11. California Government Code section 54952(b); *see also Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal. 4th 821, 25 Cal. Rptr. 2d 148
12. 56 Op. Cal. Att'y Gen. 14 (1973)
13. 56 Op. Cal. Att'y Gen. 14 (1973)
14. *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal. App. 3d 870, 105 Cal. Rptr. 855
15. 59 Op. Cal. Att'y Gen. 162 (1976)

Chapter 4: Notices and Agendas

"...SHALL BE OPEN AND PUBLIC..."

There are two essentials for an open and public meeting. One is effective notice; whether the meeting is open or not is academic if no one knows about it. The other is an agenda which adequately describes the items to be considered.

Every meeting of the legislative body of a local agency—including advisory committees, commissions or boards, as well as standing committees of legislative bodies—must have public notice and a written agenda. The specifics vary by type of meeting.

Regular meetings

Legislative bodies must set the time and place for their regular meetings by ordinance, resolution, bylaws or similar formal rule for conducting business. Advisory committees or standing committees may but need not require regular meetings by their own rules. Meetings of these latter two categories of bodies for which an agenda is posted 72 hours in advance are considered a regular meetings.[1]

An agenda must be posted at least 72 hours before a regular meeting in a location "freely accessible to members of the public." It shall state the meeting time and place and must contain "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."[2]

Brief descriptions of agenda items were first required in 1987. A letter placed in the *Senate Daily Journal* explained that the intent was for agendas to "contain sufficient descriptions ... to enable members of the general public to determine the general nature of subject matter of each agenda item, so that they may seek further information on items of interest. It is not the purpose of this bill to require agendas to contain the degree of information required to satisfy constitutional due process requirements." There remained some disagreement over the detail necessary in an agenda. The 1994 amendments revised the section to specify that a brief description "generally need not exceed 20 words."[3]

With three exceptions (see the end of this chapter), no action or discussion can take place on an item not on the posted agenda.[4] However, other limited, routine comments, also as discussed at the end of this chapter.

Special meetings

The presiding officer or a majority of a legislative body, including an advisory or standing committee, may call a special meeting at any time. For the majority to act, there is implied authority for them to communicate to determine if they want to call a special meeting.

Written notice must be sent, and received by, each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station which has requested such notice in writing.[5]

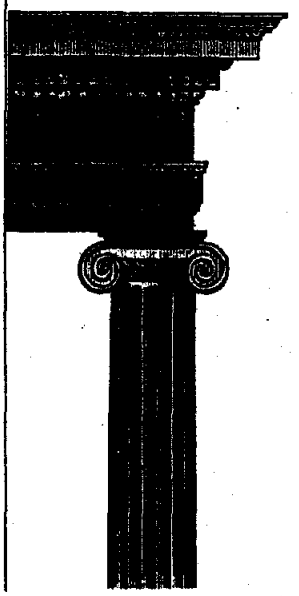
The notice must state the time and place of the meeting, and all business to be transacted or discussed. It must be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. Media notice must be delivered by personal delivery or any other means which ensures receipt, at least 24 hours before the time of the meeting. The body cannot consider business not in the notice.[6]

Adjourned meetings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment. If no time is stated, the meeting is continued to the hour for regular meetings. Less than a quorum may so adjourn a meeting; and if no member of the legislative body is present, the clerk or secretary may adjourn the meeting.[7] If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[8] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.[9]

Closed sessions

Part or all of a regular or special meeting, or one which has been adjourned, may be closed to the public under special conditions (discussed in Chapter 6). But notice is still required, even if no



The Brown Act provides a series of "safe harbor" examples—so called because descriptions that substantially comply with them cannot be challenged as not accurately describing the action. (These examples appear in Section 54954.5 in the text at the end of this guide.)

The legislative body in a closed session can consider only matters covered in its agenda descriptions. After closed session, the legislative body must reconvene to open session and may be required to disclose actions taken. The requirement for a public report of action varies depending largely on whether the action of the agency renders the matter final or whether action of a third party is necessary. When announcements are required, they may be made at the location of the closed session announced in the agenda, or where the agency holds its open sessions, as long as the public is allowed to be present.[11]

Continued hearings

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[12]

Emergency meetings

An agency can hold an emergency meeting when prompt action is needed due to the actual or threatened disruption of public facilities. An "emergency situation" exists if the legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health, safety or both.[13]

The legislative body may not meet in closed session during emergency meetings.

The special meeting provisions apply to emergency meetings, except for the 24-hour notice. News media which have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However the news media must be notified as soon as possible of the meeting and any action taken.

The legislative body may not meet in closed session during emergency meetings.

Minutes of emergency meetings, a list of persons notified or attempted to be notified, a copy of the roll call vote, and any actions taken must be posted for a minimum of 10 days in a public place as soon after the meeting as possible.[14]

It behooves the news media to make sure written requests are on file for notification of special or emergency meetings. The written requests should also be periodically renewed—especially if phone numbers or addresses have been changed. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings—although notification may be advisable in any event to avoid controversy.

Mailed agenda upon written request

The legislative body, or its designee, shall mail a copy of the agenda or copies of all the documents in the agenda packet, to any person who has filed a written request for such materials. The mailed copies of the agenda, or agenda packets, shall be mailed at the time the agenda is posted.

A request for notice is valid for one calendar year and renewal requests must be filed January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[15]

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions,[16] however, they are generally consistent with the Brown Act. An item is apparently void if not posted.[17] A school district must also adopt regulations to make sure the public can place matters affecting district business on meeting agendas, and to address the board on those items.[18]

Notice requirements for tax or assessment meetings and hearings

The Brown Act contains specific procedures a city, county, special district or joint powers authority must take before adopting any new or increased general tax or assessment.[19]

At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days' notice of a public hearing at which public testimony may be given before the legislative body

proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.[20] The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of articles XIIIC or XIIID of the Constitution,[21] which was added by Proposition 218 in 1996.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda.[22]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings).
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted."
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

As seen in the above-described instances, the exceptions are narrow. The first two require a specific determination by the legislative body. That determination can be challenged in court, and if unsubstantiated can lead to invalidation of an action.

The second exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A "new" need does not arise because staff forgot to put an item on the agenda, or because an applicant missed a deadline.

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, make a brief announcement, or briefly report on his or her own activities.[23] However, caution should be used to avoid any discussion or action on such items.

"I'd like a two-thirds vote of the board, so we can go ahead and act on pahse two of the East Area Project," said chairman Jones.

"It's not on the agenda. But we learned two days ago that we're ahead of schedule—believe it or not—and I'd like to keep it that way. Do I hear a motion?"

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled citizen. If possible, the prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."

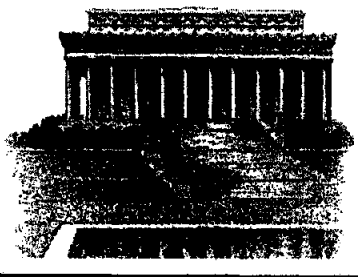
A legitimate immediate need can be acted upon even though not on the posted agenda by following a two step process:

- *First, make the finding that there is an immediate need to take action that arose since the posting of the agenda and the matter is then "placed on the agenda."*
- *Second, discuss and act on the item.*

The Brown Act generally prohibits any action or discussion of items not on the posted agenda.

Notes

1. California Government Code section 54954(a)
2. California Government Code section 54954.2(a)
3. California Government Code section 54954.2(a)
4. California Government Code section 54954.2(a)
5. California Government Code section 54956
6. California Government Code section 54956
7. California Government Code section 54955
8. California Government Code section 54954.2(b)(3)
9. California Government Code section 54955
10. California Government Code section 54957.7(a)
11. California Government Code section 55957.7(b) and (c)
12. California Government Code section 54955.1
13. California Government Code section 54956.5
14. California Government Code section 54956.5
15. California Government Code section 54954.1
16. California Education Code section 35144 and 35145
17. *Carlson v. Paradise Unified School District* (1971) 18 Cal. App. 3d 196, 95 Cal. Rptr. 650
18. California Education Code section 35145.5
19. California Government Code section 54954.6
20. California Government Code section 54954.6(g)
21. California Government Code section 54954.6(a)(1)
22. California Government Code section 54954.2(b)
23. California Government Code section 54954.2(a)



"...ALL PERSONS SHALL BE PERMITTED TO ATTEND..."

A number of the Brown Act's provisions protect the public's right to attend and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire or other document circulated at a meeting must clearly state that its completion is voluntary, and that all persons may attend whether or not they fill it out.[1]

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[2] (This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[3])

Action by secret ballot, whether preliminary or final, is flatly prohibited.[4]

There can be no "semi-closed" meetings, which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.[5]

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[6]

Finally, no notice, agenda, announcement or report required by the Brown Act need identify a victim of sexual misconduct or child abuse, unless the identity of the person has been publicly disclosed.[7]

"Are there any comments from the public?" asked the Mayor during the city council meeting.

A man stepped forward from the audience, and the Mayor continued, "Please give us your name and address for the record."

"I don't have to, and I'd rather not," came the reply.

"You don't have to give us your name to attend the meeting," said the Mayor, "but you do if you want to testify."

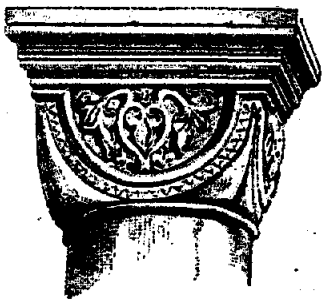
It is unclear whether members of the public can be required to provide their names, addresses or other information as a condition to participating in (as opposed to attending) a meeting. If such information is relevant and necessary to the subject matter of a public hearing or evidentiary proceeding, it probably can be required. On the other hand, it seems less likely that such information can be required as a prerequisite to addressing the legislative body during oral communication on general matters within the subject matter jurisdiction of the agency.[8]

Records and recordings

The public has the right to review agendas and other writings distributed to a majority of the legislative body. Except for privileged documents, those materials are public records and must be made available.[9] A fee or deposit may be charged for a copy of a public record.[10]

To ensure action is not taken on documents not available for public review, writings must be made public:

- 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.



A fee or deposit may be charged for a copy of a public record.

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 also subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[11] The agency may impose its ordinary charge for copies.[12]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting, absent a reasonable finding by the legislative body that recorders or cameras would persistently disrupt proceedings.[13]

A local agency cannot prohibit or restrict the public broadcast of its open and public meetings without reasonable finding that the noise, illumination or obstruction of view will be a "persistent" disruption.[14]

Finally, governing bodies can go beyond these minimal standards to require greater access to their meetings and to those of their appointed bodies.[15]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[16]

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.[17]

The legislative body may adopt reasonable regulations, including time limits, on public comments.[18] Such regulations should be enforced fairly and without regard to speakers' viewpoints.

The public need not be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item but need not allow members of the public an opportunity to speak on nonagendized items.[19]

Reactive discussion

The public can talk about anything, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

The Brown Act specifically allows members of the legislative body or its staff to "briefly respond" to comments or questions from members of the public.[20] Other brief or routine comments may also be made, as mentioned at the end of the previous chapter.

Notes

1. California Government Code section 54953.3
2. California Government Code section 54961(a)
3. California Government Code section 54952.2(c)(2)
4. California Government Code section 54953(c)
5. 46 Op. Cal. Att'y Gen. 34 (1965)
6. California Government Code section 54957.9
7. California Government Code section 54961(b)
8. California Government Code section 54954.3(b)
9. California Government Code section 54957.5
10. California Government Code section 54957.5
11. California Government Code section 54953.5(b)
12. California Government Code section 54957.5(c)
13. California Government Code section 54953.5(a)
14. California Government Code section 54953.6
15. California Government Code section 54953.7
16. California Government Code section 54954.3(a)
17. California Government Code section 54954.3(c)
18. California Government Code section 54954.3(b); 75 Op. Cal. Att'y Gen. 89 (1992)
19. California Government Code section 54954.3(a)
20. California Government Code section 54954.2(a)

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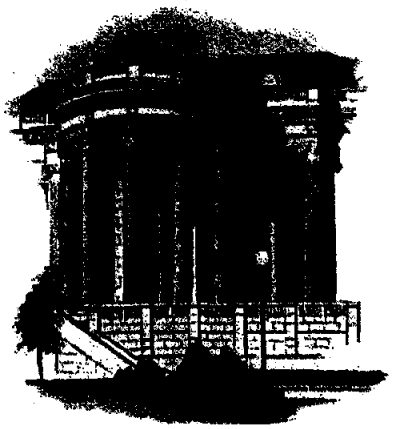


Chapter 6: Closed Sessions

"...EXCEPT AS OTHERWISE PROVIDED..."

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[1]

Meetings of a legislative body are either open or closed.

Meetings of a legislative body are either open or closed. A legislative body cannot invite selected members of the public to attend a meeting while excluding others.[2] Closed sessions should involve only the members of the body, plus any additional support staff required, legal counsel, a supervisor involved in a disciplinary matter, consultants, a labor negotiator or any witnesses in the case where the legislative body is hearing complaints and charges against an employee. Individuals who do not have an official role in advising the legislative body on closed session subject matters should be excluded from closed session discussions.[3]

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind. In this chapter, the grounds for convening a closed session are called "exceptions," because they are exceptions to the general rule that meetings must be conducted openly.

Agendas and reports

The legal authority for a closed session must be included on the posted agenda, with the same kind of brief description required of a regular meeting item.

The Brown Act supplies a series of fill-in-the-blank samples, which provide a "safe harbor" from legal attacks. These samples cover license and permit determinations, real property negotiations, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees. (For details, see section 54954.5 of the Brown Act text at the end of this guide.)

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[4]

Following a closed session, if action is taken, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session.[5] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

In addition, if there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[6]

A confidential "minute book" may be kept to record actions taken at closed sessions.[7] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict-of-interest.[8] Minute books must also be disclosed to a court if a lawsuit claims an open meeting violation. Minutes of an improper closed session are not confidential.

Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions, and legislative bodies do well to

resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Personnel

Meetings can be closed for "personnel matters"—a term used more for convenience than for accuracy. The text of the Brown Act never mentions "personnel."

The law instead says a meeting can be closed "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."[9] The purpose of the personnel exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[10]

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her, and has the right to have the specific complaints and charges discussed in a public session. If the employee is not given notice, any disciplinary action is null and void.[11] However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation, as distinguished from consideration of specific complaints and charges made against an employee. In recent opinions, the Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[12] The opinions say that the Brown Act's notice and hearing requirements apply when the legislative body is reviewing evidence of specific complaints and charges and adjudicating conflicting testimony offered as evidence.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, department head or chief engineer. An example of the latter is a legal counsel hired on contract to act as local agency attorney.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[13] Action on individuals who are not "employees" must also be public—including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter.)

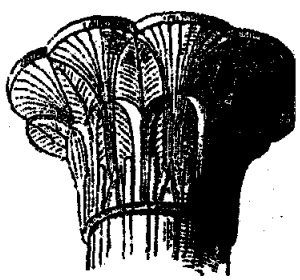
The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session. Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[14] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[15]

"I have some important news to announce," said board chairman Jones. "We've decided to terminate the contract of the chief executive, effective immediately. The board has met in closed session, and we've negotiated six months' severance pay."

"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."

This may be an improper use of the personnel closed session. Any action on individual compensation must be taken in open session. However, if an employee has filed a claim or had threatened litigation the governing body may hold a potential litigation closed session and approve a severance package in connection with a settlement agreement.



Protection of the attorney/client privilege cannot by itself be the reason for a closed session.

Pending litigation

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[16]

The Brown Act expressly authorizes closed sessions to discuss what is considered "pending litigation." The rules that apply to holding a pending litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in pending litigation.[17] While the issue is not absolutely clear, the Attorney General believes that if the agency's attorney is not a participant, a "pending litigation" closed session cannot be held.[18] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

"Litigation" that may be discussed in closed session includes the following three types of matters:

(1) Existing litigation,
(2) Threatened or anticipated litigation, and
(3) Potential litigation.

Existing litigation

Existing litigation includes any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops or to consider alternatives for resolution of the case.

Threatened or anticipated litigation against the local agency

counsel to inform the legislative body of specific facts and circumstances which suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances. The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

Potential litigation initiated by the local agency

A closed session may be held under the pending litigation exception when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda. Certain actions must be reported in open session at the same meeting following the closed session.

Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person. Each agency attorney is aware of and should make other disclosures that may be required in specific instances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator or negotiators on price and terms of payment.[19]

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, the legislative body must identify its negotiator, the real property which the negotiations may concern and the names of the persons with whom its negotiators may negotiate.[20]

After real estate negotiations are concluded, the approval of the agreement and the substance of the agreement must be reported. If its own approval makes the agreement final, the body must

report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it, as well as the substance of the agreement, upon the inquiry of any person.

"Our population is exploding, and we have to think about new school sites," said Board Member Baker.

"Not only that," interjected Board Member Charles, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member Doe. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites—which must be identified at an open and public meeting. However, a legislative body can make a final decision on real property in a closed session.

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[21] on employee salaries and fringe benefits for both union and non-union employees; for represented employees, it may also consider working conditions which by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[22]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[23] The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an "employee" includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

Labor negotiations—school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Act:

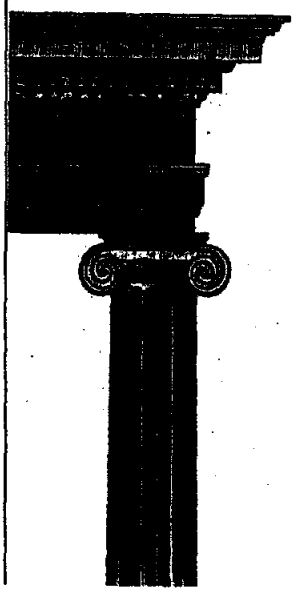
(1) a negotiating session with a recognized or certified employee organization;
(2) a meeting of a mediator with either side;
(3) a hearing or meeting held by a fact finder or arbitrator; and
(4) a session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[24]

Public participation under the Rodda Act also takes another form.[25] All initial proposals of both sides must be presented at public meetings and are public record. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[26] The final vote must be in public.

Other Education Code exceptions

Student disciplinary meetings by boards of school districts and community college districts are governed by the Education Code. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing

Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.



would reveal personal, disciplinary or academic information about students contrary to state and federal pupil privacy law. The pupil's parent or guardian may request an open meeting.

Final action concerning kindergarten through 12th grade students must be taken at a public meeting, and is a public record.[27] In the case of community colleges, only expulsions need be made public.

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[28] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[29]

Grand jury testimony

A legislative body, including its members as individuals, may specifically testify in private before a grand jury, either individually or as a group.[30] Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license.

If the body as a result decides to deny the license, the applicant may withdraw the application. In that case, no record is to be kept of the decision and all elements of the closed session are confidential.

If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[31]

Public security

Legislative bodies can meet in closed session to discuss matters posing a threat to the security of public buildings, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with either the Attorney General, district attorney, sheriff or chief of police, or their deputies.[32] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional drug law enforcement agency

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[33]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[34]

- One is to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
- The other allows district or municipal hospitals to hold closed sessions to discuss "reports involving trade secrets"—provided no action is taken.

A trade secret is defined as information which is not generally known to the public or competitors and which (1) "derives independent economic value, actual or potential" by virtue of its restricted

knowledge, (2) is necessary to initiate a new hospital service or program or facility, and (3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[35]

Maintaining the confidentiality of closed session discussions

The Brown Act lacks guidance on whether remedies are available to prohibit or punish closed session "leaks." The law remains unsettled in this area. Agency attorneys and the Attorney General believe that officials have a fiduciary duty to protect the confidentiality of closed session discussions. This duty, of course, must give way to the obligation to disclose improper matters or discussions which may come up in closed sessions.

The Attorney General has issued an opinion that it is "improper" for officials to publicly disclose information received during a closed session regarding pending litigation, though he also concludes that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.[36] The opinion includes a list of sanctions that could apply to a person who discloses closed session information, including

- an injunction barring the person's attendance at future closed sessions,
- an injunction against future public disclosures, and
- a formal accusation filed against the person for willful or corrupt misconduct in office.[37]

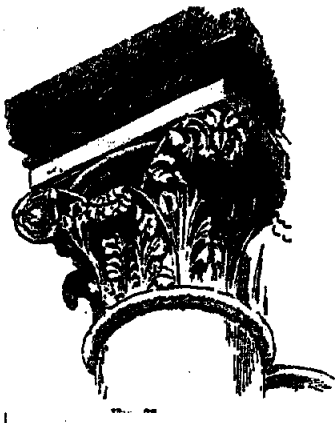
The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[38] This holding supports the notion that there is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

"I want the press to know that I voted in closed session against settlement and will continue to do so as long as these discussions progress," said Council Member Arnold.

"Don't settle," reveals Council Member Baker to the plaintiff, over coffee. "The city's offer coming your way is not our bottom line."

The Brown Act expressly permits—in fact, requires—that final votes taken in closed session be reported publicly.[39] Disclosure of other closed session information is risky, at best. The only completely safe way to divulge closed session discussions is pursuant to a court order issued under section 54960(a) of the Brown Act. That section provides a remedy to a member of a legislative body to determine by court order whether the legislative body's efforts to discourage the official's disclosure of information is passes muster under federal or state law.



Notes

1. 61 Op. Cal. Att'y Gen. 220 (1978)
2. 46 Op. Cal. Att'y Gen. 34 (1965)
3. 98 Op. Cal Attorney Gen. 1011 (1999)
4. California Government Code sections 54956.9 and 54957.7
5. California Government Code section 54957.1(a)
6. California Government Code section 54957.1(b)
7. California Government Code section 54957.2
8. *Hamilton v. Town of Los Gatos* (1989) 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888
9. California Government Code section 54957
10. 63 Op. Cal. Att'y Gen. 215 (1980)
11. California Government Code section 54957
12. 78 Op. Cal. Att'y Gen. 218 (1995); *Furtado v. Sierra Community College* (1998) 68 Cal. App. 4th 876, 80 Cal. Rptr. 2d 589; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal. App. 4th 87, 82 Cal. Rptr. 2d 452
13. California Government Code section 54957
14. *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal. App. 4th 1165, 79 Cal. Rptr. 2d 649
15. California Government Code section 54957.1(a)(5)
16. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
17. California Government Code section 54956.9
18. "Open Meeting Laws," California Attorney General, 1989, p. 41
19. California Government Code section 54956.8
20. California Government Code section 54956.8
21. California Government Code section 54957.6
22. 57 Op. Cal. Att'y Gen. 209 (1974)
23. California Government Code section 54957.1(a)(6)
24. California Government Code section 3549.1
25. California Government Code section 3540
26. California Government Code section 3547
27. California Education Code section 48918
28. California Education Code section 72122
29. California Education Code section 60617
30. California Government Code section 54953.1
31. California Government Code section 54956.7
32. California Government Code section 54957
33. California Government Code section 54957.8
34. California Government Code section 54962
35. California Health and Safety Code section 32106
36. 76 Op. Cal. Att'y Gen. 289 (1993)
37. 80 Op. Cal. Att'y Gen. 231 (1997)
38. *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324, 327, 87 Cal. Rptr. 2d 813, 815
39. California Government Code section 54957.1

There is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

Chapter 7: Remedies

The Brown Act had no penalties or methods for enforcing compliance when first enacted. However, subsequent amendments have put teeth into enforcement. Specifically, the Brown Act was amended in 1961 to make violations a crime, and to authorize civil action to stop or prevent violations. A provision went into effect in 1987 permitting invalidation of some actions taken in violation of the law. The 1994 amendments extended the time limits for starting an invalidation action, and altered the definition of a misdemeanor violation.

As discussed below, persons wishing to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions.

Even with safeguards such as posting a specific agenda, closed session parameters, and new remedies to enforce these provisions, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. In other words, compliance ultimately requires a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any person, including the district attorney, may seek to invalidate a legislative body's actions that violate the Brown Act. Not all actions can be challenged; and in any case the legislative body has a chance to cure or correct its actions.[1]

A legislative body should cure and correct a challenged action whenever feasible.

Only actions taken in violation of certain provisions of the Brown Act may be invalidated. Invalidation is limited to actions which violate the following sections of the Brown Act: Section 54953 (the basic open meeting provision); Sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings).

Even violations of these provisions cannot be invalidated if they involve the following types of actions:

- those in substantial compliance with these provisions;
- those involving sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- those connected with the collection of any tax; or
- those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

The challenger to the action must also show prejudice as a result of the alleged violation.[2]

Violations of sections not listed here cannot give rise to invalidation actions, but are subject to the other remedies.[3]

Before filing a court action, the aggrieved party must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the alleged violation, and the "cure" sought, and it must be sent within 90 days of the alleged violation. (However, the time limit is 30 days if the action was taken in open session but in violation of Section 54952.2, which defines "meetings.")[4]

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any law suit must be filed within the next 15 days.

Despite its limitations, the invalidation language means legislative bodies should be even more careful not to violate the Brown Act. Challenges are likely to come from the general public and news media as well as from unexpected quarters—such as disgruntled business people. Some violations, such as inadequate agenda descriptions or posting, may be relatively easy to cure and correct. Other violations—such as inappropriate closed sessions—may be more difficult to correct.

A legislative body should cure and correct a challenged action whenever feasible. Two items should be placed on the next agenda, the first for a decision on whether to correct or cure an action, and the second for consideration of the action if the answer to the first item is "yes." The recommended action in the latter case is not to rescind a previous action but to supersede it. The record of the earlier meeting can be incorporated, but new public testimony should be allowed.

Civil action

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- 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 under state or federal law; or
- Compel the legislative body to tape record its closed sessions. The court may later review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant sections.[5]

Costs and attorney's fees

Someone from the agency who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. However, the award is only against the local agency and not the individual members of the legislative body. A local agency may be awarded court costs and attorney's fees if the court finds the law suit was clearly frivolous and lacking in merit.[6]

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[7]

A criminal violation has two components. The first is that there must be an overt act—a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[8]

"Action taken" is defined elsewhere as not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[9] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[10] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[11] As with other misdemeanors, the filing of a complaint is up to the district attorney.

Informal resolution

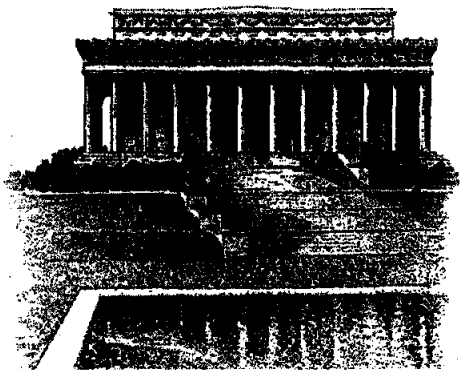
Public agencies always have the opportunity to re-notice and re-hear items of significant public interest. Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy citizens fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down.

The best solution is prevention.

The best solution is prevention.

Notes

1. California Government Code section 54960.1
2. *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 556, 35 Cal. Rptr. 2d 782, 786
3. California Government Code section 54960.1(a)
4. California Government Code section 54960.1, subds. (b) and (c)(1)
5. California Government Code section 54960
6. California Government Code section 54960.5
7. California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
8. California Government Code section 54959
9. California Government Code section 54952.6
10. 61 Op. Cal. Att'y Gen. 283 (1978)
11. California Government Code section 54959



Chapter 8: Beyond the Law

This guide has focused not only on the Brown Act, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices for itself and its subordinate committees and bodies that are more stringent than the law itself requires. Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise. As with any other significant policy, public comment should be solicited.

Local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise.

A local policy could reflect:

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

Many agencies may have specific constituencies with other expectations. An explicit and comprehensive public meeting and information policy, especially if reviewed periodically could be an important element in maintaining or improving public relations.

Such a policy exceeds the absolute requirements of the law—but if the law were enough this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. It may be well for an agency to go beyond the law, to look at its unique circumstances and determine if there is a better way to prevent potential problems.

At the very least, local agencies need to think about how their agendas are structured, and to work at making compliance with the Brown Act easier. They need to plan carefully to make sure public participation fits smoothly into the process.

The Brown Act should be neither an excuse for bureaucratic obfuscation nor a mechanism for public filibusters. And it should not preclude efficient and orderly meetings.

The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for the maximum degree of openness in local government, yet should allow government to function responsively and productively.

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, the Brown Act must assure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

Twenty Frequently Asked Questions and Answers

1. The agency's web-site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act? *Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.*

2. A member of the legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting? *No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

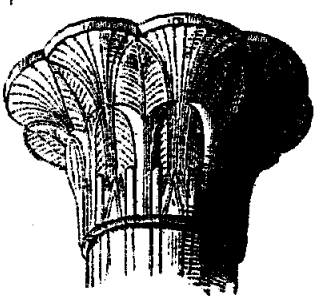
3. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question? *Yes, because the incumbents should not be constrained from participating in the political process as any other candidate.*

4. The entire legislative body intends to travel to Sacramento to testify against a bill before the Senate Local Government Committee. Must this activity be noticed as a meeting of the body? *No, because the members are attending and participating in an open meeting of another governmental body to which the public may attend.*

5. The members in question #4 then proceed upstairs to the office of their local assemblyperson to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public? *Yes, because the entire body may not meet behind closed doors except for proper closed sessions.*

6. A member on vacation desires to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she? *She probably may participate, but she may not vote because she is not in a noticed and posted teleconference location.*

7. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference at city hall in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal? *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken by the council and the press conference is open to the public, it seems harmless.*



8. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go? *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be able to attend.*

9. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors? *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

10. A member of the legislative body informally establishes an advisory committee of five residents to advise her on issues as they arise. Is this committee covered by the Brown Act? *No, because the committee has not been established by formal action of the legislative body.*

11. On the morning following the election to a five-member legislative body of a local agency, the three successful candidates, none incumbents, meet for a celebratory breakfast. Does this violate the Brown Act? *It might, and absolutely would if the conversation turns to*

agency business. Even though not officially sworn in, the Brown Act applies to these individuals. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.

12. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she? *She may attend, but only as an observer; she may not participate.*

13. The agenda for a regular meeting of the legislative body contains the following item of business under New Business:

"Consideration of a report regarding traffic on Eighth Street."

Is this description adequate? *If it is, it is barely adequate. A better description would provide the reader with some idea of what the report is about, and what is being recommended.*

14. The agenda always includes an opportunity for the "Chief Executive Officer's Report," during which time the officer provides a brief report on notable topics of interest, none of which are listed on the agenda. Is this permissible? *Yes, as long as it does not result in legislative body discussion or action.*

15. Must the legislative body allow members of the public to show videos during the "audience participation" part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit? *Probably, though the agency is under no obligation to provide equipment.*

16. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during audience comments? *No, as long as the criticism pertains to job performance.*

17. During the audience comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech? *No, for Brown Act purposes, the speech is relevant to the governing of the agency and an implicit criticism of the incumbents.*

18. May the legislative body agree to settle a lawsuit in a properly noticed closed session, without placing the settlement agreement on an open session agenda for public approval? *Yes, but the settlement agreement is a public document and must be disclosed on request.*

19. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer? *No, attendance in closed sessions is reserved exclusively to the agency's advisors.*

20. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session? *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

The Ralph M. Brown Act

California Government Code Sections 54950-54962

As Amended January 1, 2000

Intent

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.

Title

54950.5. This chapter shall be known as the Ralph M. Brown Act.

"local agency": public agencies

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.

"legislative body": governing body

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.

body created by formal action

(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 which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by 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 or entity that either:

private corporation: exercises delegated authority

(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 or entity.

private corporation: receives public funds/ appointed legislative body member on its governing board

(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.

status change from voting member to nonvoting member: public meeting requirements

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation or 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 or 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.

lessee of a hospital

(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.

newly-elected members

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.

"meeting" defined

54952.2. (a) As used in this chapter, "meeting" includes any 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 that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

majority cannot use direct communication, personal intermediaries or technological devices

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

exceptions:

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

1. individual contacts

(1) Individual contacts or conversations between a member of a legislative body and any other person.

2. conferences

(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. community meetings

(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. another 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. social or ceremonial events

(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. standing committee meeting

(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.

"action taken"

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

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.

copies of the Brown Act for members, appointees

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.

all meetings must be open and public

(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.

video teleconferencing

(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. 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.

public access

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

no secret ballots

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.

grand jury testimony

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.

public cannot be required to register to attend meeting

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.

voluntary registration

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 tape recorder or a still or motion picture camera in the absence of a reasonable finding

public can tape meetings

noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

recordings are public record

(b) Any tape or film record 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 taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

broadcast of open meetings

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.

local agencies can impose stricter requirements on themselves

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.

regular meetings set by ordinance or other rule

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.

meetings must be within local agency's territory

(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:

exceptions

(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

(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 the superintendent of that 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.

mailed notice

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. 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.

regular meeting agendas: 72-hour notice and posting

54954.2. (a) 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.

action on non-agenda items

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

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.

Item continued from meeting less than 5 days earlier

(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.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

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

(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.

public opportunity to address the legislative body

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.

reasonable constraints on public testimony

(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.

public criticism of policies, procedures, programs or services

(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.

reimbursement of costs

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

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.

"safe harbors" for closed session agendas

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 and permit determinations

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:

real estate negotiations

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:

existing litigation

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
(Subdivision (a) of Section 54956.9)

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

—or—

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

anticipated litigation

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:
(Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide

additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

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

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

liability claims

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:

threats to public services

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: (Specify name of law enforcement agency and title of officer)

public employees

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:

labor negotiation conference

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:

multijurisdictional drug law enforcement agency

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)

hospital exceptions

HEARINGS

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

hearings

(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.)

federal law

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.

tax or assessment hearings

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

new or increased taxes

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 phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

new or increased assessments

(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 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 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 or the State Board of Equalization assessment roll, 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) The estimated amount of the assessment per parcel. 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 phone 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

(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 XIIIC or XIIID of the California Constitution is not subject to the notice and hearing requirements of this section.

adjourned meetings

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 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.

continued hearings

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.

special meetings

54956. 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. 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.

emergency meetings

54956.5. 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.

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which 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 by telephone and all telephone numbers provided in the most recent request of such 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.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

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.

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.

no fees except those specifically authorized

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.

closed sessions: license applicants with criminal records

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.

closed sessions: conference with negotiator over real property

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.

closed sessions: health plan charge or complaint

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.

disclosure exemption for health plan records

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, formulae 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 (c) of Section 32106 of the Health and Safety Code, 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) 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 Corporations 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.

closed session: pending litigation

54956.9. 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.

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.

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.

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

Litigation formally initiated

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

significant exposure to litigation

(b) (1) 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.

meeting to decide if closed meeting is authorized

(2) 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 (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) 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.

(B) 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.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) 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.

(E) 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).

initiating litigation

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

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 subdivision of this section that authorizes the closed session. If the session is closed pursuant to subdivision (a), 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.

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.

closed session claims against joint powers agencies

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.

closed sessions: threats to public buildings or to public access

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or 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, or 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.

personnel matters

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.

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.

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. Nothing in this section shall 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 section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

public reports on closed session actions, votes

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

real estate negotiations

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

(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.

pending litigation

(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 specified below:

(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.

joint powers authority claims

(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.

personnel actions

(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.

labor negotiations

(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.

copies of closed session documents

(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 paragraph (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.

closed session minute book

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.

writings distributed to a majority of a body are public records

(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).

closed session minute book

54957.5. (a) Notwithstanding Section 6255 or any other provisions of 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 a public 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, 6254.7, or 6254.22.

(b) 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.

(c) Nothing in this chapter shall 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 6257.

(d) 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). Nothing in this chapter shall be construed to require a legislative body of a

closed sessions: meeting with representatives on labor negotiations

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.

advance announcement of closed session items

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.

closed session: multijurisdictional drug law enforcement agency

54957.8. Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug 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.

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

willful interruptions of meetings

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.

provisions apply notwithstanding conflicts of law

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.

misdemeanor violations of the Act

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.

civil actions to prevent violations

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 actions or threatened future action of the legislative body, 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 tape 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 tape record its closed sessions and preserve the tape 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 tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape 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 which 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 which has custody and control of the tape 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 which has custody and control of the recording.

(ii) An affidavit which 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) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

action to invalidate

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, or 54956 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, or 54956. 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, or 54956 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, and 54956.

(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, or 54956 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.

court may award attorney fees

54960.5. A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. 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.

meeting sites must be free of discrimination and accessible to disabled

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 race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. 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.

no closed meetings except as expressly authorized

54962. Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 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.

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Open and Public Participants

Association of California Hospital Districts

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California Special Districts Association

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Price: 15.00
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KEEP HAYWARD CLEAN AND GREEN TASK FORCE (KHCG)

Notes from2/22/07 Meeting
(Initial Meeting of the Task Force)

I. **Call to Order** – 7:05 PM by Chair Mayor Michael Sweeney

II. **Pledge of Allegiance**

III. **Roll Call**: Absent – Cora Johnson (called in before hand) and Vecipia Robinson. (A full list of members is attached as Attachment A to these notes.)

IV. **Public Comment** – Comments were heard from the audience about focusing on cleaning up the creek behind Casa Sandoval, and local merchants assisting homeowners with cash discounts to encourage replanting of residential landscape damaged in the recent freeze. Other residents from O'Neil Avenue provided a written list of areas of concern and suggestions to address them, which was given to Mayor Sweeney.

V. **Purpose and Role of the Task Force** – Mayor Sweeney

- Mayor Sweeney reiterated his priorities while in office
  - Improve the schools
  - Increase parks and recreational opportunities for young folks
  - Reduce crime
  - Clean up neighborhoods
- Mayor Sweeney stated that the KHCG Task Force was a major part of achieving neighborhood and general city cleanup. He noted that it was important that Task Force members:
  - Lead by example, because if Task Force members don't get out there and get their hands dirty, they cannot expect to ask others to do it. The Task Force must demonstrate that members are committed and serious about this effort.
  - Organize others since it will be impossible for 30 people, no matter how talented or committed, to do it all themselves.
  - Assist the City in improving policies and procedures to support the overall effort. He stated the expectation that Task Force members will clearly and appropriately express what the City does well and perhaps not so well, and make suggestions about how to strengthen City support of a clean and green Hayward.

VI. **Self-Introductions and Priorities** – Mayor Sweeney asked each Task Force member to introduce themselves, give some information about their background and why they are interested in serving on the Task Force, and to list two priorities for moving us closer to a "clean and green Hayward." The results of that interaction are summarized in Attachment B to these Notes.

VII. **Schedule and Frequency of Meetings** – It was decided that the Task Force would continue to meet every two weeks on Thursdays from 7:00 – 9:00 PM until they are better organized. The Task Force will continue to meet in City Hall in Room 2A until internal "leaders" are selected and a specific work program outlined. Members confirmed that the 7:00 PM to 9:00 PM time slot was good for now.

There was group discussion about the value of breaking into sub-committees or sub-groups based on interest, geography, activity, or some similar criteria. It was generally agreed that this would probably happen, but would naturally evolve as the Task Force continued with the initial formation meetings and a work plan was identified, which needed to be done as whole group.

There was interest in developing and promoting a Task Force Identity. Inquiry was made as to whether or not there could be a group picture somewhere in the process. Reference was made to developing an emblem that can be publicized and promoted as the Task Force implements programs.

VIII. **Next Meeting** – March 8, 2007, from 7:00 – 9:00 PM in Room 2A of City Hall, chaired by Mayor Sweeney. The Mayor summarized the following draft agenda based on discussion and comments of the Task Force:

- Brown Act Training – City Attorney (A "make-up" session for those who cannot be present 3/8/07 should be scheduled with Maureen Conneely of the City Attorney's Office.)
- Selecting and formalizing Task Force Leadership
- Deciding on working structure and organization for the Task Force
- Review of new additions to the City's recycling efforts – City staff
- Discussion of and response to Task Force questions on the City's current graffiti response and removal programs – City staff
- Mayor Sweeney asked Task Force members to think about the value of a bus tour of the City as suggested by a Task Force member, and to tentatively decide yes or no at the next meeting.

IX. **Adjournment** – By Mayor Sweeney at 9:15 PM

ATTACHMENT B:

Summary of Discussion on Priorities from 2/22/07 Initial Meeting of the KHCG Task Force

Process: Each Task Force member was asked to identify two priorities that they believed were critical to addressing if the Task Force were to improve the appearance and physical environmental health of Hayward.

Guiding Phrases coming out of Task Force discussion:

- "It's not about wealth; it's about pride."
- "Pride is visual."

Currently Designated Days, for which Task Force members might consider planning activities, or formally participating in activities already planned by others:

- April 22nd – Earth Day
- May 19th – City Clean-up Day
- October 27th – Make a Difference Day

Priority Areas evolving from discussion among Task Force Members: Much of the discussion evolved around how important the physical appearance of the City is in forming the perception of the City for those who don't live or work here; and to developing and sustaining the pride of those that do live, work, and go to school here. It was also noted that pride and appearance were linked and it was difficult to say which occurs first before the other (i.e., is neighborhood and City pride a motivating force for people to keep the City clean, or does a clean city develop and foster pride?)

1. Schools – there was much discussion about the importance of the physical appearance of our schools. Discussion tied school appearance to perception of our community, and how children/students thought of themselves. Comments were made that community pride started here for both students and residents.
   a. Pacheco proposal – Attachment C
   b. Each Task Force member adopt a school (almost 1:1 ratio), and work closely with the administration, students, and PTA
   c. "Curb appeal" of schools critical to pride of students and perception of City (paint, landscaping, fence repair, trash management)
2. Entrance Areas (or "gates) to the City/Major Thoroughfares – these must be improved with landscaping and other projects that tell others Hayward is a great community. These are the first things folks see coming into the City. If these aren't attractive, there is no incentive to explore further and the perception is that Hayward is a "dirty" city that does not care about itself.
3. Restoring and supporting neighborhood pride
   a. Build on homeowners' associations and existing neighborhood activities
   b. Target clean up efforts to help neighborhoods identify with each other and strengthen their pride
   c. Regular and publicized recognition of "the best street" or the "most beautiful street", etc.

   d. Develop a system or approach that assists those in neighborhoods who cannot do the work themselves, such as disabled, seniors, or very low income.
   e. Utilize art downtown
4. Communication with all residents and business
   a. Make the rules known; clarify what's required/expected and why
   b. Improve and publicize available resources
   c. Be inclusive
   d. Divert young graffiti artists to productive and desirable public art projects
5. Leveraging existing groups and contacts
   a. Build on Neighborhood Alert structure already in place
   b. Liaison to other groups and utilize their structure to get volunteers and to communicate
   c. Coordinate with schools so that students do required community service in support of the "clean and green" effort
6. Responsibility of business owners
   a. Absentee landlords – find a way to contact them and get them committed
   b. Motivate businesses to take responsibility for keeping their own frontage and buildings clean
   c. Invite, encourage, and then enforce, if necessary
7. General City "cleaning"
   a. Graffiti response and removal
   b. Litter removal
   c. Clean creeks and waterways
   d. Remove outdated decorations and event signs
   e. Abandoned autos
8. City "greening"/landscaping
   a. Increase the trees in Hayward
   b. See #2
   c. Develop and sustain neighborhood gardens and "pocket" parks; vegetable gardens for the neighborhood
9. Undesirable activity
   a. Homeless behavior that is contrary to the community norms, or desired community activity
   b. Car sales on Tennyson
   c. Day workers congregating on Tennyson
   d. Garbage/recycling scavenging in residential areas
   e. Power blowers
   f. Empty residential garbage containers left out on streets for too long
   g. Big rig parking in the Industrial Parkway area; can't street sweep properly; trash accumulation
10. Sustainability practices
   a. Increase recycling, both residential and businesses
   b. Identify and support carbon reduction programs
   c. Put solar energy in schools and other public buildings
   d. Take active steps to support and promote the use of alternative energy in the community
11. Street safety
   a. Improved street lighting that is brighter and energy efficient

CITY OF HAYWARD
STAFF REPORT

AGENDA DATE 03/08/07
AGENDA ITEM 9

TO: Keep Hayward Clean and Green Task Force

FROM: City Manager

SUBJECT: Graffiti Prevention, Response, and Abatement Services in Hayward

RECOMMENDATION

It is recommended that the Task Force review and comment on this report.

BACKGROUND

At its February meeting, the Keep Hayward Clean and Green Task Force (KHCG) members asked for information regarding how the City addresses the issue of graffiti. Graffiti prevention, response, and abatement services are provided through multiple City departments.

The sources of graffiti range from "neighborhood kids" to "vandals" to gang "tagging", and the intensity of graffiti activity varies by time and geographical location. The complete eradication and control of graffiti is highly unlikely given the causes and the limited City resources available to respond. There is little doubt that neighborhood awareness and participation is a major key to preventing and controlling graffiti in many areas of the City.

CITY SERVICES

Prevention: Graffiti prevention is addressed in multiple ways through design elements approved during the project approval process. Prevention is also addressed through on-going communication with and education of neighborhoods and homeowners associations.

Abatement: Graffiti abatement occurs through the "Graffiti Busters" program in the Finance – Facilities Division. The Graffiti Busters is a van that offers on-site graffiti abatement services, on a one-time basis, to retail and commercial businesses and to residential fences and retaining walls. Subsequent graffiti after the courtesy removal is the responsibility of the property owner and will be subject to Community Preservation enforcement. Property owners who wish to eradicate existing graffiti in their neighborhoods can obtain basic color paint from the Facilities Division to paint over graffiti, after an inspection to verify the graffiti. Paint is available in these basic colors: Bart Gray, Special Beige, Oxford Brown, Burnt Tile, Plain Gray, and Light Gray. Graffiti is also abated from municipal property, pedestrian and vehicular overpasses where accessible, BART and railroad columns, sidewalks (power-washed), traffic control boxes and poles, street light poles, public sound walls along thoroughfares like Winton Avenue and

Tennyson Road, and the Amtrak station. Due to limited staffing, little is currently done to remove graffiti on street light poles and traffic control boxes and poles.

The Community and Economic Development Department provides abatement services through the Community Preservation Division. They are responsible for addressing recurring and chronic graffiti occurrences on private property that are not addressed by the property owner, both residential and commercial. In accordance with Section 3-11.05 of the City's Graffiti prevention and Abatement Ordinance (attached), the enforcement staff first attempts to work with the property owner to assume responsibility for the abatement. If unsuccessful, the Enforcement Officer may initiate an Abatement Action by serving a notice on the property owner that gives them a specified number of days to comply[1] or be subject to a fine. If the graffiti is not removed, fees are assessed and increase over time. If that does not solve the problem, the City will abate the graffiti and bill the property owner.

The Public Works – Streets Division has responsibility for graffiti prevention and abatement services on various street signs in the public right of way. Graffiti on traffic signals and street lights is removed by Facilities, although the city's traffic signal maintenance contractor will also address any graffiti found during bimonthly maintenance inspections. Public Works staff spends most of their time on graffiti abatement related to street signs.

Recent Changes and Improvements: The City recently made changes to the WEB site (www.hayward-ca.gov) to make reporting of graffiti and other community appearance concerns easier and less confusing. This new link can be found on the City's home page in the upper right-hand quadrant, entitled:

Effective March 15, 2007, the Finance Department will field all communications coming through the City website reporting process related to graffiti concerns and distribute them to the proper responder, both within the City organization and to outside agencies. Those initiating the graffiti-related complaint will not have to determine the property agency/owner nor have to make a second or third contact in order to lodge their concerns. Those using this reporting link will also receive notification that their concern has been received, and City staff will follow up to assure that there was a response.

Staff is also reviewing the use of the "Graffiti Hotline", 510-583-8888, to determine how it can be made more effective and efficient; and to assure that it is integrated with the new changes to

[1] Chapter 3, Article 11, (Graffiti Prevention and Abatement), Section 3-11 of the City's Municipal Code (attached) specifies that the time period allowed for compliance is 10 days. However, Chapter 5, Article 7, "Community Preservation and Improvement", was updated in 2002. Section 5-7.20 defines Public Nuisance and includes graffiti on public or private property in that definition. Section 5-7.30 dealing with the Abatement Notice process states, "The Notice to Abate shall set forth a reasonable time limit for the owner to abate the condition, which shall be no less than three calendar days or not more than 14 calendar days from the date of the Notice,..." . Staff tends to rely more on this enforcement time frame than on the 10 days specified in the older Chapter 3, Article 11. These two sections will be reconciled in the future.

the Web site. Although it remains listed in the White Pages of the telephone book, it has been removed from the WEB and has been replaced by the new reporting link described above. Once it is determined how well the new link is working, the structure and use of the Graffiti Hotline will be revisited.

Jesús Armas

ARTICLE 11

GRAFFITI PREVENTION AND ABATEMENT

Section	Subject Matter
3-11.00	TITLE
3-11.01	PURPOSE AND INTENT
3-11.02	DEFINITIONS
3-11.03	REGULATION OF SALES AND PURCHASES OF AEROSOL CONTAINERS OF PAINT AND WIDE-TIPPED MARKERS
3-11.04	PROHIBITION
3-11.05	NOTICE OF GRAFFITI ABATEMENT ACTION
3-11.06	MANNER OF GIVING ABATEMENT NOTICE
3-11.07	ADMINISTRATIVE HEARING
3-11.08	ABATEMENT BY CITY
3-11.09	ACCOUNT AND REPORT OF COSTS
3-11.10	NOTICE OF REPORT
3-11.11	CONFIRMATION HEARING
3-11.12	COLLECTION ON TAX ROLL
3-11.13	VIOLATIONS
3-11.14	STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION
3-11.15	PROCEDURE NOT EXCLUSIVE
3-11.16	LIABILITY FOR DAMAGES

ARTICLE 11

GRAFFITI PREVENTION AND ABATEMENT
(Added by Ord. 94-08, adopted March 8, 1994)

SEC. 3-11.00 TITLE. This article shall be known as the 'Graffiti Prevention and Abatement Ordinance.'

SEC. 3-11.01 PURPOSE AND INTENT. The City Council hereby finds and declares that:

(a) Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities, and the enjoyment of life; is inconsistent with the City's community preservation goals and aesthetic standards; and results in additional graffiti and in other properties becoming targets of graffiti unless it is quickly removed from public and private property.

(b) Graffiti results in visual pollution and is hereby deemed a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

(c) It is the purpose of this article to establish procedures and adopt regulations whereby all public and private property within the City may be maintained free of graffiti.

SEC. 3-11.02 DEFINITIONS. For purposes of this article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their context that a different meaning is intended:

(a) 'Graffiti' means any unauthorized inscription of a word, symbol, or design which is marked, etched, scratched, drawn, or painted on any structural component of any public or private building, structure, facility, property, vehicle, or other item.

(b) 'Abate' shall mean the removal or covering over of graffiti by such means and in such manner and to such an extent as is necessary in the interest of the general health, safety, and welfare of the community as determined by the enforcement officer.

(c) 'Enforcement Officer' shall mean the Community Preservation Manager or other employee or official appointed and designated by the City Manager to administer the provisions of this article.

(d) 'Owner' shall mean any person so designated on the last equalized assessment roll, as well as any person having or claiming to have any legal or equitable interest in privately owned real property.

SEC. 3-11.03 REGULATION OF SALES AND PURCHASES OF AEROSOL CONTAINERS OF PAINT AND WIDE-TIPPED MARKERS.

(a) It is unlawful for any person, firm, business, or corporation, except a parent or legal guardian, or a teacher during a supervised activity, to sell or give or in any way furnish to another person, who is in fact under the age of 18 years, any aerosol container of paint that is capable of defacing property. Before selling any aerosol container of paint, a retailer must first obtain bona fide evidence of majority and identity. As used herein, the phrase "bona fide evidence of majority and identity" shall mean any document evidencing the age and identity of any individual which has been issued by a federal, state, or local governmental entity, and includes, but is not limited to, a motor vehicle operator's license, a registration certificate issued under the federal selective service act, or an identification card issued to a member of the armed forces.

(b) It is unlawful for any person under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(c) Every person who owns, conducts, operates, or manages a retail commercial establishment selling pressurized paint cans of any size or weight, or any marker with a marking tip one-half inch or more at its largest dimension that is capable of defacing property with permanent, indelible, or waterproof ink, paint, or other liquid, shall store or cause such pressurized paint cans or markers to be stored in an area continuously observable by employees of the retail establishment during the regular course of business.

In the event a retail commercial establishment is unable to store such pressurized paint cans or markers in an area as described in this article, as an alternative, pressurized paint cans and markers shall be stored in an area viewable by but not accessible to the public in the regular course of business without employee assistance, pending the lawful sale or disposition of the pressurized paint cans or markers.

(d) Every retailer or other business establishment selling or offering for sale in this City aerosol containers of paint and/or wide tipped markers capable of defacing property shall post in a conspicuous place a sign in letters at least three-eighths of an inch high stating: 'Any person who maliciously defaces real or personal property with paint or permanent marker ink is guilty of vandalism which is punishable by a fine, imprisonment, or both.'

SEC. 3-11.04 PROHIBITION. It shall be unlawful for the Owner of any real property within the City bearing graffiti to allow the graffiti to remain on the property.

SEC. 3-11.05 NOTICE OF GRAFFITI ABATEMENT ACTION. Whenever the Enforcement Officer determines that graffiti exists in violation of section 3-11.04, and he or she is unable or unsuccessful in working with the Owner to remove or cover the graffiti, the Enforcement Officer may initiate a Graffiti Abatement Action by causing a Graffiti Abatement Notice to be served upon the Owner notifying the Owner of the violation of this ordinance and directing the Owner to abate the violation within 10 days from the date of notice or appear before the Enforcement Officer to show cause why the violation should not be abated by the City at the Owner's expense.

The notice shall be substantially in the following form:

NOTICE TO REMOVE GRAFFITI

(NAME AND ADDRESS OF PERSON NOTIFIED)

As owner, agent, lessee, or other person occupying or having charge or control of the building, lot, or premises at _____, you are hereby notified that the undersigned has determined that graffiti exists upon the above described premises in violation of Hayward Municipal Code section 3-11.04.

You are hereby notified that by _____, you must abate the above condition to the satisfaction of the undersigned, or request an administrative hearing to show cause, if any you have, as to why the condition should not be abated by the City and the expenses thereof charged to your property and if not paid thereafter, made a lien upon the real property described above. You may request an administrative hearing by calling the undersigned at _____. Abatement is to be accomplished in the following manner:

DATED:_____

By _____

SEC. 3-11.06 MANNER OF GIVING ABATEMENT NOTICE. A copy of the notice provided for in section 3-11.05 shall be sent to the Owner and may be sent to any other responsible person. The notice shall be sent by regular, first class mail, postage prepaid, and addressed as follows:

To the Owner: As the Owner's name and address appears on the last equalized assessment roll of the County of Alameda or as known to the Enforcement Officer.

To Any Other Responsible Person: As the responsible person's name and address are known to the Enforcement Officer or the person authorized by him or her to give notice.

Service shall be deemed complete at the time notice is deposited in the mail. The failure of any Owner or any other responsible person to receive notice shall not affect the validity of any proceedings taken hereunder.

SEC. 3-11.07 ADMINISTRATIVE HEARING. At the time fixed for the administrative hearing, if one is requested, the hearing officer shall consider all relevant evidence, objections, or protests offered on behalf of the Owner or responsible person which tend to show why the condition should not be abated and the expense thereof charged to the Owner or responsible person as a civil debt and if not paid thereafter made a lien upon the premises. The Enforcement Officer may also consider rebuttal evidence offered by the City. The hearing may be continued from time to time.

If at the conclusion of the hearing the Enforcement Officer is satisfied that the condition exists and concludes that it should be abated, he or she shall so advise the persons attending the hearing, either orally or in writing.

SEC. 3-11.08 ABATEMENT BY CITY. If the nuisance is not abated as ordered within the abatement period, the Enforcement Officer shall cause it to be abated by City employees or private contractors as the Enforcement Officer may authorize to enter upon the premises. The cost, including administrative expenses, of abating the nuisance shall be billed to the Owner and shall become due and payable 30 days thereafter. The term 'administrative expense' shall include, but not be limited to the following: personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts, and in inspecting the work, and the costs of printing and mailing the notices required hereunder.

SEC. 3-11.09 ACCOUNT AND REPORT OF COSTS. The Enforcement Officer shall keep an account of the cost of abating the nuisance and include that account in an annual report and assessment list to the City Council, which shall be filed with the City Clerk. The assessment list shall refer to each separate lot or parcel of land by a description that is sufficient to identify the lot or parcel together with the expense proposed to be assessed against each separate lot or parcel of land.

SEC. 3-11.10 NOTICE OF REPORT. The City Clerk shall post a copy of the report and assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place it will be submitted to the City Council for hearing and confirmation, notifying property owners that they may appear at such time and place and object to any matter contained therein. A like notice shall also be published twice in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 3-11.11 CONFIRMATION HEARING. At the time and place fixed for receiving and considering the annual report, the City Council shall hear the same together with any objections that may be raised by any person liable to be assessed for the work of abating the nuisance; the Enforcement Officer shall attend the meeting with his or her record thereof, and upon the hearing, the Council may make the modifications in the proposed assessments as it may deem necessary, after which the report and assessment list shall be confirmed by resolution.

The amount of the cost of abating the nuisance, including administrative expenses, shall constitute special assessments against the respective lots or parcels of land and after being confirmed shall constitute a lien on the property for the amount of the assessments until paid.

SEC. 3-11.12 COLLECTION ON TAX ROLL. After confirmation of the report, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid assessments shall have been sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reports shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such special assessment and the lien of the assessment shall have priority of the taxes with which it is collected.

SEC. 3-11.13 VIOLATIONS. Violation of any of the provisions of this article by any person or entity shall constitute an infraction. Such person or entity shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation is committed, continued, or takes place.

SEC. 3-11.14 STAY OF PROCEEDINGS DURING CRIMINAL PROSECUTION. In any case in which a criminal prosecution is pending or is about to be instituted for violation of Penal Code sections 594 and 640.6, or of any other law that authorizes a court to sentence a criminal defendant or ward of the court to remove graffiti placed on property by that person, the Enforcement Officer may suspend abatement actions under this article. In such a case, the abatement action shall be suspended only in connection with any property upon which the defendant or ward is charged with placing graffiti, and only until such time as he or she is sentenced. This provision shall not prohibit a property owner from removing graffiti from his or her own property during such time as the criminal proceeding is pending.

SEC. 3-11.15 PROCEDURE NOT EXCLUSIVE. The procedures provided in the provisions of this article shall be cumulative and in addition to any other procedures provided in ordinances of this City or by state law for the prevention and abatement of any of the conditions described herein and abatement hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such condition.

SEC. 3-11.16 LIABILITY FOR DAMAGES. Pursuant to section 1714.1(b) of the California Civil Code, any parent or legal guardian whose minor child commits any act of willful misconduct which results in the defacement of property of another with paint or other substance shall be personally liable for any and all costs to any person or business incurred in connection with the removal of graffiti caused by the minor, and for all City costs, including attorneys fees and court costs incurred in any civil action caused by the misconduct. The parent or legal guardian shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed $10,000 for each such act of the minor."

CITY OF HAYWARD

STAFF REPORT

AGENDA DATE 03/08/07

AGENDA ITEM 10

TO: Keep Hayward Clean and Green Task Force

FROM: City Manager

SUBJECT: Waste Collection and Recycling Services in Hayward

RECOMMENDATION

It is recommended that the Task Force review and comment on this report.

BACKGROUND

At its February 22, 2007 meeting, the Keep Hayward Clean and Green Task Force asked for information regarding what "clean and green" services the City provides. Waste collection and recycling services are provided under contract with Waste Management of Alameda County (WMAC). The contract provides for the collection and disposal of residential and commercial waste, and coordinates recycling and source reduction programs.

The attached report was provided to Council, and describes the additional waste collection and recycling services that will be implemented by June 1, 2007 through the new franchise agreement recently negotiated and signed with WMAC. In addition, Tri-CED, a local, community-based, non-profit organization serves as a subcontractor to WMAC for residential recycling services.

In a report to Council on January 9, 2007, staff provided more detail on the new commercial recycling services that will be implemented under the new franchise agreement. Businesses will now be offered collection of recyclables and organic materials: recyclable collections at no additional costs, and organics recycling services at a rate set at 50% of comparable rates for garbage service. The services include separate collection of recyclables (e.g., cardboard, paper, scrap metal, bottles, and cans), and organic materials (e.g., green waste, food waste, wood waste, and low-grade paper) using wheeled carts and bins with capacity ranging from 1 to 7 cubic yards. As part of the overall commercial recycling program, WMAC also adds sorting designated loads of trash from bins, large roll-off boxes, and compactors for processing in order to increase recovery of recyclables and organic materials. Based on reports submitted by WMAC, about 78% of the City's total disposed waste is generated by businesses; and based on a waste characterization survey conducted for StopWaste.Org, as much as 40% of this generated waste from businesses consists of easily recyclable materials.

Jesús Armas

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 05/23/06
AGENDA ITEM 14
WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Business Terms of Franchise Agreement for Solid Waste and Recycling Services

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution approving the business terms to be included in a Franchise Agreement with Waste Management of Alameda County (WMAC).

BACKGROUND:

At its February 14 meeting, the Council authorized a one-year extension to the existing Franchise Agreement with WMAC, to May 2008, in order to allow time for the City to take proposals for solid waste services and allow for a possible transition to a new service provider. However, the Council also authorized the City Manager to continue negotiations with WMAC to determine whether a mutually beneficial extension to the current contract could be agreed upon.

At the February meeting, the Council provided direction to staff with regard to service components to be addressed during the negotiation process. In addition, at the Council's direction, staff solicited comments from residents and businesses on a new Franchise Agreement via a published notice in the *Daily Review*. To date, no comments have been received. Placement of a notice as a bill insert was not possible, since negotiations would be completed before the next bill insert would be received by residents and businesses.

As a result of the negotiations, staff and WMAC have reached an agreement on the business terms of a new Franchise Agreement. This report describes these proposed business terms for residential and commercial services and the corresponding rate adjustments.

In the negotiation process, WMAC requested an increase in rates for current services based on the representation that the current rates have failed to keep pace with actual costs. Staff reviewed the results of recent negotiations and "requests for proposal" (RFP) processes by neighboring jurisdictions. Based on this review, staff determined that recently approved Franchise Agreements have resulted in rate increases of between 20% and 30%; in some instances, higher ranges were also approved. It appears that jurisdictions that went through the RFP process did not ultimately end up with lower rates than those jurisdictions that negotiated directly with their service provider.

Exhibit A

Proposed Term, Service Enhancements, and Rates

Staff has also determined that enhancements to current services are necessary and desirable in order to keep pace with changes in the solid waste and recycling industry. These enhancements have been negotiated into the proposed business terms. The proposed Franchise Agreement would become effective June 1, 2007, and would continue for seven years with three one-year extension options at the City's discretion. All existing services would be maintained. Proposed service enhancements are summarized below:

Residential Services:

- Continue Current Services Using Existing Carts: Single-family residents would continue to use their existing garbage and green waste carts. Carts would continue to be placed at the curb, not in the street, in order to allow street sweeping services to continue with minimal interruptions. New 20-gallon wheeled carts would be provided to those customers requesting that service.

- Co-Mingled Recyclables Collection Using Carts: All single-family households would be provided a two-wheeled cart with hinged-lid to collect their co-mingled recyclables. Collection services would continue to be provided by Tri-CED each week on the same day as garbage collection. Residents would be provided a 64-gallon cart, unless they request a 35-gallon cart. Carts present advantages over bins, including larger capacity, easy maneuverability, and the lid reduces litter. Additionally, this should help reduce the amount of illegal scavenging currently experienced in some neighborhoods.

- Annual Residential Clean-Up Service: The current annual bulky waste appointment service would continue without any changes; all bulky waste would continue to be removed on the scheduled appointment day. Additionally, improperly prepared but otherwise acceptable items would also be removed for a fee approved by the City. New services would include removal of unscheduled setouts in the immediate vicinity of all scheduled setouts in order to reduce illegal dumping and the potential for scavenging. WMAC would also sort all such loads of garbage for processing in order to remove and recycle metals and clean wood.

- Free Disposal of Two Cubic Yards of Self-Hauled Waste: WMAC would offer annual coupons to all Hayward residential customers subscribing to individual cart service, which would allow a one-time delivery of up to two cubic yards of garbage for free disposal at the Davis Street Transfer Station. In order to be able to offer this service at no additional cost to rate payers, it would be limited to the first 1200 coupons redeemed each year.

- Batteries Collection: Effective February 2006, California Universal Waste Rule prohibits disposal of certain waste, including household batteries, in the trash. Under the proposed Agreement, residential customers would be able to recycle common household batteries, such as those used in flash lights and cameras, by putting them in plastic bags and setting them next to their recycling container, similar to how used oil filters are recycled.

- Discount for "Sharps" Disposal: Proper disposal of syringes, hypodermic needles and other "sharps" would be less expensive for Hayward residents through a 30% discount being provided by WMAC at participating drug stores.

- Christmas Tree Collection: Curbside collection from single- and multi-family dwellings, up to 25 units, would continue. New services would include collection from multi-family dwellings of more than 25 units, using large-capacity boxes that would be delivered for placement in parking lots or other mutually agreeable locations.

- Public Litter Cans: An additional 50 litter cans would be available for service around the City.

- Free Compost: WMAC would provide 4,000 one-cubic-foot bags of compost, which would be offered by the City to residents at no charge during an annual one-day event on a selected weekend.

- Food Waste Collection: At the City's option, food waste collection from single-family homes could be implemented in 2009-2010. The food waste would be co-mingled with the green waste already collected and delivered to a facility to be identified for composting. The customer would not see any increase in cost for this service.

- Dirt and Debris: Increase in the amount of City generated dirt and debris that may be delivered to WMAC for disposal from 500 to 3,000 tons annually.

- Biosolids Disposal: Disposal of up to 6,000 tons per year of biosolids and 250 tons of grit from the City's Water Pollution Control Facility.

Commercial Recycling Services

- While significant progress has been made in defining both the scope and funding for the addition of a commercial recycling program, more time is needed to develop the specifics. Acceptable materials would include co-mingled food scraps, yard trimmings, soiled paper products, waxed cardboard and clean wood from businesses for composting. Details on both how the program will be implemented and corresponding rates will be provided with the final recommended Franchise Agreement.

Alternative Fuel Vehicles

- Compressed/Liquid Natural Gas: At the February Council meeting, interest was expressed in the use of AFV for residential collection and recycling services. Use of alternative fuel vehicles would result in a significant and immediate reduction in both Particulate Matter emissions (PM) and Nitric Oxide (NOx) emissions. PM emissions have been identified by the California Air Resources Board as a toxic air contaminant. In addition, NOx is also a significant contributor to smog and a source of poor air quality.

  Accordingly, staff asked WMAC to estimate the cost of using such vehicles. The use of alternative fuel vehicles would result in a 4.15 % additional increase in cost of service for

all customers. This added cost does reflect the continued availability of grants for AFVs from the Bay Area Air Quality Management District. For a typical 35-gal cart residential customer, this would add $.93 per month to their rates. Staff believes this added cost is reasonable and is a positive step the City can take toward improving the environment. Therefore, staff recommends this alternative, which would result in either new Compressed Natural Gas (CNG) or new Liquid Natural Gas (LNG) equipment for the entire residential fleet beginning June 2007. WMAC has indicated there is a large backlog in getting new AFV vehicles and that it would need to start ordering 12 months in advance of delivery dates. Thus, it is critical to be able to confirm this aspect of the Franchise.

- Clean-Burning Diesel Trucks: If the AFV alternative is not acceptable, WMAC proposes to phase in new clean-burning diesel vehicles for residential refuse and green waste collection over the first four years of the proposed Franchise Agreement, with 3 to 4 new or retrofitted vehicles each year. For the residential recycling program, new recycling trucks would be required in June 2007 because of the new cart collection method; these trucks would all use clean-burning diesel. In all cases WMAC would be responsible for meeting all air quality control board requirements during the term of the Agreement.

Proposed Rate Increases and Comparison with Other Jurisdictions

- Residential Rate Increase: Currently, 72% of Hayward residential customers subscribe to weekly 35-gallon service. Under the existing Agreement, residential rates for this service are scheduled to rise to $17.69 effective June 1, 2006. Approval of the residential services described above, including the AFV alternative, would increase monthly rates from $17.69 for a 35-gallon cart to $23.28, beginning June 1, 2007. A comparison of residential rates among other jurisdictions in Alameda County is attached for reference (See Exhibit A). This comparison shows that if the proposed rates are approved, Hayward would continue to have reasonable rates for refuse service when compared to neighboring jurisdictions. The exhibit also indicates the resultant rates if the alternative fuel vehicle proposal was not selected.

- Commercial and Roll-Off Rate Increase: Preliminary commercial and roll-off rates would have similar increases. A comparison of typical commercial and roll-off rates by jurisdiction is also included in Exhibit A, for information purposes. However, these rates do not yet address the commercial recycling program. As noted earlier, staff will require additional information to complete its review of the commercial recycling services and proposed costs and will include its final recommendation in a report to Council that will describe the provisions of a new Franchise Agreement.

- CPI Rate Adjustments: Annual rate adjustments for non-fuel costs would continue at 80% of CPI for all services. Additionally, to account for the future impact of rising energy costs, a separate adjustment would be made to the fuel component of the rates. Each year the total costs of diesel fuel, LNG and CNG would be reported and reviewed by staff, and the rates adjusted to account for 75% of the past year's change in fuel cost.

- Street Sweeping Fee: WMAC would remit to the City a fee that would be used to offset a portion of the City's street sweeping and cleaning costs due to the debris that is usually left behind after the garbage trucks have completed their routes. The fee will be 2.5% of WMAC's gross revenue.

Assuming the Council approves the proposed business terms for a new Franchise Agreement, staff will finalize negotiations and prepare a new Franchise Agreement for the Council's consideration by mid-September 2006.

Prepared by:

Alex Ameri, Deputy Director of Public Works/Utilities

Recommended by:

Robert A. Bauman, Director of Public Works

Approved by:

Jesús Armas, City Manager

Attachments:

Exhibit A – Comparison of Residential and Commercial Rates in Alameda County

Comparison of Residential, Commercial and Roll-Off Rates for Selected Jurisdictions in Alameda County: Rates are projected for March – September 2007

Jurisdiction	Monthly Residential Rate 32 – 35 Gal Cart	Monthly Commercial 1 Cubic Yard	Service Rate Roll-Off 30 Cubic Yards
Union City	$28.43	$86.90	$524.35
Oakland	$26.00	$122.01	$762.77
Fremont	$24.28	$63.90	$390.64
Alameda	$24.26	$91.85	$1,107.38
Hayward (proposed)	**$23.28**	**$98.45**	**$547.12**
Albany	$22.99	$93.80	$547.99
Hayward (without AFVs)	**$22.35**	**$93.64**	**$519.36**
San Leandro*	$19.37	$84.90	$531.62
Castro Valley Sanitary District**	$18.90	$79.66	$440.84
Hayward (existing eff. June 1, 2006)	**$17.69**	**$72.95**	**$399.16**
Oro Loma Sanitary District*	$15.82	$72.57	$472.05

*Residential recycling services are provided every other week.
**Franchise expires in 2009

Note: Hayward commercial and roll-off rates are preliminary estimates and subject to further review.