FACULTY LIST

Northern Session	Southern Session

MODERATORS

Northern Session	Southern Session
Manuela Albuquerque, City Attorney, Berkeley	Michael Jenkins, City Attorney, Malibu, Rolling Hills, and West Hollywood

BROWN ACT (MORNING SEGMENT)

Northern Session	Southern Session
Ariel Pierre Calonne, City Attorney, Palo Alto	Peter N. Brown, City Attorney, Carpinteria
Thomas R. Curry, City Attorney, Livermore	Leland Dolley, City Attorney, Alhambra and El Segundo
Ted Prim, Attorney General's Office	Ted Prim, Attorney General's Office
Jayne W. Williams, City Attorney, Oakland	John Wilson, City Attorney, Banning

PUBLIC RECORDS ACT (AFTERNOON SEGMENT)

Northern Session	Southern Session
Stephanie Atigh, City Attorney, Salinas	Jimmy L. Gutierrez, City Attorney, Chino
Jylana Collins, Deputy City Attorney, Berkeley	Roger Krauel, City Attorney, Coronado, Del Mar and Encinitas
Everett Jenkins, Assistant City Attorney, Richmond	Kathleen M. Weinheimer, City Attorney, Pismo Beach

CITY ATTORNEYS DEPARTMENT OFFICERS

President
Michael Jenkins, City Attorney, Malibu, Rolling Hills and West Hollywood

First Vice President
Manuela Albuquerque, City Attorney, Berkeley

Second Vice President
Daniel S. Hentschke, City Attorney, Oceanside and Solana Beach

Board of Directors Representative
Lynn McDougal, City Attorney, El Cajon and Imperial Beach

About Minimum Continuing Education Credit

The Basic Requirement

The League is a State Bar-approved provider of minimum continuing legal education (MCLE) for attorneys in California. State law requires attorneys to average 12 hours per year of MCLE in order to continue to practice law. See California Rule of Court 958. At least half of these hours must involve "participatory" (as opposed to self-study) continuing education programs. See MCLE Regulation 2.2.

Attorneys, Sign in Please

In order to receive MCLE credit for attending this seminar, the State Bar requires attorneys to sign the attendance log and pick-up an attendance certificate. See MCLE Regulation 7.2.1. and 7.2.3. The logs and certificates will be near the entrance to the room in which this seminar is occurring. *Attorneys must sign-in/pick-up the certificates at the seminar; the sign-in sheets will be closed after the seminar and certificates will not be issued except at the seminar in question.*

Reporting to the State Bar

The State Bar requires attorneys to keep an overall record of their continuing education activities for each compliance period for an unspecified period. See MCLE Regulation 12.2. The State Bar will send each attorney a "Compliance Card" two months before the end of his or her compliance period; each attorney must attest under penalty of perjury that he or she has complied with the MCLE requirements for the period. See MCLE Regulation 12.1. The cards must be returned to the Bar no later than the day after the end of the attorney's compliance period. Id.

Evaluation Forms

The State Bar also requires the League to distribute State Bar-approved evaluation forms. See MCLE Regulation 7.2.5. The League, the City Attorneys Department officers, and the Bar encourage attorneys to fill out these evaluation forms. Evaluation forms may be turned in at any time; a collection box will be available for this purpose on the table at the back of the room.

For The Record

A copy of the League's approval letter as well as the State Bar's MCLE regulations is attached for attorneys' information and records.

Attachments

THE STATE BAR
OF CALIFORNIA

OFFICE OF CERTIFICATION

100 VAN NESS AVENUE, 29th FLOOR, SAN FRANCISCO, CALIFORNIA 94102-3208 TELEPHONE: (415) 241-2100

August 2, 1993

JoAnne Speers
League of California Cities
1400 K St 4th Flr
Sacramento, CA 95814

Effective Date: September 1, 1993

Dear Provider:

On behalf of the Committee on Minimum Continuing Legal Education, I am pleased to advise you that the Committee has approved your renewal as a Provider under section 9 of the MCLE Rules and Regulations. Your approved Provider status commences on the effective date listed above and ends August 31, 1994 subject to section 9.3.

Please review section 7 of the MCLE Rules and Regulations for your obligation for maintenance of records, inclusion of language in promotional materials, and provision of a certificate of attendance for members.

For you information, enclosed are the following:

1. State Bar of California approved Education Activity Evaluation From (You may wish to add other items same issues as the State Bar approved Education Activity Evaluation from and submit it to the MCLE Committee for approval prior to its use.)
2. Sample Official Record of Attendance
3. Sample Certificate of Attendance
4. Guidelines issued by the Committee on Minimum Continuing Legal Education
5. Informational sheet from the Department of Justice regarding the Americans with Disabilities Act (ADA)
6. An informational sheet regarding issues of concern to providers.

The State Bar encouraged elimination of bias by urging approved providers to select presenters and instructors without regard to sex, color, race, religion, ancestry, national origin, blindness or other disability, age and sexual orientation. We solicit your support for this policy.

The Committee on Minimum Continuing Legal Education greatly appreciates your contributions by providing MCLE activities to California attorneys and your efforts to expand and improve attorney competence through continuing legal education. We wish you every success in providing quality education activities for our members.

Yours very truly,

Dana Simmons

Dana Simmons
Director, Administration Unit

REMEMBER: Do not send any materials unless requested to do so.

MCLE RULES AND REGULATIONS
(Adopted by the Board of Governors on December 8, 1990 — Post December 8, 1990 Rule Amendments Shown at End of Specific Rules)

1.0 PURPOSE

Continuing legal education is required of all active members of the State Bar of California not specifically exempted from this requirement to assure that, throughout their careers, California attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices.

2.0 MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENT

2.1 REQUIREMENT

Except as otherwise provided, all active members of the State Bar of California shall complete at least 36 hours of approved continuing legal education activities every 36 months. Of the 36 hours:

2.1.1 At least eight shall be in the areas of legal ethics and/or law practice management. One of the eight hours may, instead, be satisfied by legal education in the civil and criminal remedies available for civil rights violations. However, members shall complete no less than four of the eight hours in legal ethics; (Amended effective December 26, 1992.)

2.1.2 At least one shall relate to prevention, detection, and treatment of substance abuse and emotional distress; and

2.1.3 At least one shall relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation.

Instruction in legal ethics, prevention, detection, and treatment of substance abuse and emotional distress, and elimination of bias may be a portion of a substantive law education activity.

2.2 AMOUNT OF SELF-STUDY

Up to but not more than 18 hours credit may be given for self-study activities during any compliance period.

3.0 COMPLIANCE PERIOD

3.1 INITIAL COMPLIANCE PERIOD

The initial compliance period shall begin on February 1, 1992. Except for the initial compliance period for Compliance Groups 2 and 3, members referred to in section 6.1, and members admitted or readmitted after February 1, 1992, all compliance periods shall be 36 months in length and shall begin the day after the end of the previous compliance period.

3.2 COMPLIANCE GROUP 1

Members whose last names begin with A-G on February 1, 1992 shall be permanently assigned to Compliance Group 1. The initial compliance period for Compliance Group 1 shall end on January 31, 1995.

3.3 COMPLIANCE GROUP 2

Members whose last names begin with H-M on February 1, 1992 shall be permanently assigned to Compliance Group 2. The initial compliance period for Compliance Group 2 shall end on January 31, 1994. During the initial compliance period, members assigned to Compliance Group 2 shall be required to complete at least 24 hours of approved continuing legal education activities. Of the 24 hours:

3.3.1 At least five shall be in the areas of legal ethics and/or law practice management, with at least three of the five hours in legal ethics; and

3.3.2 No more than 12 hours credit may be given for self-study activities.

During the initial compliance period only, such members shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

3.4 COMPLIANCE GROUP 3

Members whose last names begin with N-Z on February 1, 1992 shall be permanently assigned to Compliance Group 3. The initial compliance period for Compliance Group 3 shall end on January 31, 1993. During the initial compliance period, members assigned to Compliance Group 3 shall be required to complete at least 12 hours of approved continuing legal education activities. Of the 12 hours:

3.4.1 At least three shall be in the areas of legal ethics and/or law practice management, with at least one and one-half of the three hours in legal ethics; and

3.4.2 No more than six hours credit may be given for self-study activities.

During the initial compliance period only, such members shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

3.5 COMPLIANCE PERIOD FOR MEMBERS ADMITTED OR READMITTED AFTERFEBRUARY 1, 1992

Members admitted or readmitted to the bar after February 1, 1992 shall be permanently assigned to the appropriate Compliance Group based on the first initial of their last name at the date of admittance or readmittance. The initial compliance period after admittance or readmittance shall begin on the first day of the month of admittance or readmittance and shall end on the same day as for all other members in the same Compliance Group.

3.5.1 Where four months or less remain in the initial compliance period after admittance or readmittance, the member is not required to comply with the education requirement for the initial compliance period.

3.5.2 Where more than four months remain in the initial compliance period after admittance or readmittance, members shall be required to complete a number of hours of approved continuing legal education activities equal to the number of months remaining in the compliance period in which the member is admitted or readmitted. Such members shall be required to complete a number of hours of education in legal ethics and/or law practice management in proportion to the number of months remaining in the compliance period, with at least one-half of those hours in legal ethics. Fractions of hours shall be rounded up to the next whole number.

Formula:

$$\frac{\text{Number of Months Remaining in Compliance Period}}{36} \times 8 = \text{Legal Ethics/Law Practice Management Requirement}$$

Example: 15 Hours Remaining x 8 = 3.36
(Four Hours of Legal Ethics/Law Practice Management, With at Least Two Hours in Legal Ethics)

During the initial compliance period only, such members shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

3.6 CREDIT FOR ACTIVITIES COMPLETED ON OR AFTER SEPTEMBER 1, 1991

For the initial compliance period, approved continuing legal education or continuing legal education sponsored by a State Bar approved provider completed on or after September 1, 1991 may be claimed to meet the education requirements. This section applies only to participatory activities. (CAVEAT: Inclusion of this section and the September 1, 1991 date are dependent upon the effective date of the MCLE program.)

4.0 CATEGORIES OF CREDIT

4.1 PARTICIPATORY CREDIT

Participatory credit may be claimed for:

4.1.1 Attending approved education activities, including lectures, panel discussions, question-and-answer periods, or in-house education;

4.1.2 Viewing videotapes or film instruction, listening to audiotapes, or viewing or participating in other audiovisual activities including interactive video instruction and activities electronically transmitted from another location, if the viewing, listening, or participating has been individually approved or is sponsored by an approved provider (for purposes of this section, sponsorship requires the approved provider to ensure compliance with sections 7.1 and 7.2);

4.1.3 Speaking in approved education activities, including preparation time and presentation time, without credit for repeated presentations;

4.1.4 Attending a law school class after the member's admission to practice in California, provided the member officially registers for the class and satisfactorily completes the class (by audit or grade), as required by the law school; or

4.1.5 Teaching a class at a law school.

4.2 SELF-STUDY CREDIT

Up to but not more than 18 hours of self-study credit may be claimed per compliance period for:

4.2.1 Viewing approved videotapes or videotapes of approved activities or viewing or participating in other approved audiovisual activities;

4.2.2 Listening to approved audiotapes or audiotapes of approved activities including interactive video instruction and activities electronically transmitted from another location;

4.2.3 Preparing, as an author or co-author, written materials published or accepted for publication, e.g., in the form of an article, chapter, or book, which contribute to the legal education of the author member which were not prepared in the ordinary course of the member's practice or employment, or to accompany speaking in an approved education activity; or

4.2.4 Participating in self-assessment testing (open-book tests that are completed by the member, submitted to the provider, graded, and returned to the member with the correct answers and an explanation of why the answer chosen by the provider is the correct answer).

4.3 BAR EXAMINATION PREPARATION

No credit shall be given for activities directed primarily to preparation for a bar examination.

5.0 COMPUTATION OF CREDIT HOURS

5.1 FORMULA FOR COMPUTATION

Credit hours are computed based on actual time spent in an activity (actual instruction or speaking time, running time of tapes, audio or video) in hours to the nearest one-quarter hour reported in decimals.

Formula:

$$\frac{\text{Minutes of Instruction (time spent in activity)}}{60} = \text{Credit Hours}$$

Example: 435 Minutes = 7.25 Hours

Providers are expected to compute credit hours for approved activities based on this formula and to announce the approved number of hours.

The member will need to compute credit hours in instances of composition time for authors, as well as instances where the member attends part of a session of an approved activity.

5.2 CREDIT FOR PANELISTS

Credit hours for presentation as part of a panel in an approved education activity are computed in the same manner as other participants.

5.3 CREDIT FOR PREPARATION

Credit hours for preparing to present an approved education activity are computed by multiplying actual presentation time by three. For panelists, "actual presentation time" means the length of time the panelist is scheduled to present material rather than the actual length of the panel. For law school instructors, "actual presentation time" means the number of credit hours granted by the law school for the completion of the class multiplied by three.

5.4 CREDIT FOR TEACHING LAW SCHOOL

Credit hours for time spent teaching a law school class are computed by multiplying the number of credit hours granted by the law school for the completion of the class by three.

6.0 SPECIAL CASES AND EXEMPTIONS

6.1 PRESCRIBED EXEMPTIONS

In accordance with Business and Professions Code section 6070 and California Rule of Court 958, the following are exempt from the continuing legal education requirement:

6.1.1 Retired judges;

6.1.2 Officers and elected officials of the State of California;

6.1.3 Full-time professors at law schools accredited by the State Bar, the ABA, or both;

6.1.4 Full-time employees of the State of California acting within the scope of their employment. For purposes of this section, "full-time employees of the State of California acting within the scope of their employment" shall refer to members employed by the State of California as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law in California except as employees of the State of California; and

6.1.5 Full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment. For purposes of this subparagraph, "full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment" shall refer to members employed by the United States Government, its departments, agencies, and public corporations, as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law except as employees of the United States Government, its departments, agencies, and public corporations.

When a member referred to sections 6.1.2, 6.1.3, 6.1.4, or 6.1.5 changes status so as to be no longer exempt from the continuing legal education requirement, the compliance period shall begin on the first day of the month of the change in status and shall end on the same day as for all other members in the same Compliance Group. For the initial compliance period, members shall complete a number of hours of approved continuing legal education equal to the number of months remaining in the compliance period. For the initial compliance period, such members shall be required to complete a number of hours of education in legal ethics and/or law practice management based on the formula set forth in section 3.5.2 and shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

6.2 GOOD CAUSE EXEMPTION FROM OR MODIFICATION OF REQUIREMENT

A member may file a written request setting forth good cause for an exemption from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance with a procedure to be established by the Committee on Minimum Continuing Legal Education.

6.2.1 Should the decision be adverse to the member, the member may appeal such decision pursuant to the provisions of California Rule of Court 952(c).

6.3 ATTESTATION OF EXEMPTION FROM OR MODIFICATION OF THE REQUIREMENT

Members claiming exemption from or modification of the minimum continuing legal education requirement shall attest to and furnish such substantiation of their exempt status or modification of the requirement as the State Bar may require.

7.0 STANDARDS FOR APPROVAL OF EDUCATION ACTIVITIES

Continuing legal education activities may be granted approval in three ways; 1) the provider of the activity is an approved provider and certifies that the activity meets the criteria of section 7.1, 2) the provider of an individual activity receives approval of that activity, or 3) a member receives approval of an activity which is not individually approved, is sponsored by a provider which is not an approved provider, or is sponsored by an approved provider which does not certify that the activity meets the criteria of section 7.1.

7.1 STANDARDS FOR ALL EDUCATION ACTIVITIES

All continuing legal education activities must meet the following standards:

7.1.1 The activity shall have significant current intellectual or practical content for members;

7.1.2 The activity shall constitute an organized program of learning related to legal subjects and the legal profession, including cross profession activities (e.g., accounting-tax or medical-legal) that enhance legal skills or the ability to practice law;

7.1.3 The activity shall be conducted by an individual or group qualified by practical or academic experience;

7.1.4 Where the activity is more than one hour in length, substantive written materials must be distributed to all

participants. Such materials must be distributed at or before the time the activity is offered; and

7.1.5 In addition to the foregoing, in-house education activities must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.

7.2 REQUIREMENTS FOR ALL PROVIDERS

All approved providers and providers of approved continuing legal education activities shall agree to the following:

7.2.1 An official record verifying all members' attendance at the activity shall be maintained by the provider for at least four years after the completion date. The provider shall include the member on the official record of attendance only if the member's signature was obtained at the time of attendance at the activity. The official record of attendance shall contain the name and bar number of the members and shall identify the time, date, location, subject matter, and length of the education activity and shall be provided to the State Bar upon request at no cost to the State Bar. It is not the intent of the State Bar that a provider's failure to comply with this recordkeeping requirement give rise to a lawsuit by an member against the provider;

7.2.2 Providers shall certify in promotional materials, if any, that:

a) this activity is approved for California continuing legal education credit, including the following statement:

"This activity has been approved for Minimum Continuing Legal Education credit by the State Bar of California in the amount of ____ hours [, of which ____ hours will apply to legal ethics/law practice management/ prevention, detection, and treatment of substance abuse and emotional distress/elimination of bias credit, as appropriate to the content of the activity];" and

b) this activity conforms to the standards set forth in section 7.1, including the following statement

"[Provider] certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education;"

7.2.3 Providers shall provide a record to all members attending continuing legal education activities sponsored by the provider. The record shall identify the time, date, location, subject matter, and length of the education activity or activities;

7.2.4 Providers shall allow at no cost in-person observation of all approved continuing legal education activities by members of the State Bar Board of Governors, the Committee on Minimum Continuing Legal Education, or designees of the Committee, and the State Bar staff for purposes of monitoring compliance with sections 7.1 and 7.2; and (Amended on September 19, 1992.)

7.2.5 Providers shall indicate in promotional materials, if any, the nature of the activity, the time devoted to each topic, and identify the instructors. Providers shall make available to each participant a copy of a State Bar approved Education Activity Evaluation Form. Providers shall maintain the completed Education Activity Evaluation Forms for a period of not less than one year after the activity and shall provide the completed evaluation forms to the State Bar upon request at no cost to the State Bar.

7.3 ACTIVITIES APPROVED FOR LEGAL SPECIALIZATION CREDIT

Education activities approved for certification and or recertification credit by the California Board of Legal Specialization shall be counted towards the education requirement so long as the provider agrees to comply with the requirements of section 7.2.

7.4 ACTIVITIES APPROVED FOR CREDIT BY OTHER STATES

Education activities in section 4.0 approved for continuing legal education credit by another state which has MCLE requirements meeting standards adopted by the Committee on Minimum Continuing Legal Education shall count towards a member's compliance with the California education requirements to the same extent as in the approving state, provided that the member's address, as required by Business and Professions Code section 6002.1, subdivision (a)(1), is not in California. Such members need not seek California approval for such activities. (Amended on July 18, 1991.)

7.5 REQUIREMENTS OF CO-SPONSORS

Where an education activity is co-sponsored and has not been approved pursuant to section 8.0, the activity may be claimed for credit only if at least one of the sponsors is a State Bar approved provider. The State Bar approved provider shall ensure compliance with the requirements of sections 7.1 and 7.2. Such co-sponsorship shall not prevent an unapproved provider from applying for individual approval of the activity in accordance with section 8.

8.0 APPROVAL OF INDIVIDUAL EDUCATION ACTIVITIES

8.1 REQUIREMENTS FOR APPROVAL OF INDIVIDUAL EDUCATION ACTIVITIES

The education activities referred to in sections 4.1 and 4.2 may be approved upon the written application of providers on an individual basis. All applications for approval shall be submitted:

8.1.1 At least 30 days, and preferably longer, in advance of the presentation of the activity, although approval may be granted retroactively;

8.1.2 On a form provided by the State Bar;

8.1.3 With all information requested on the form;

8.1.4 Along with a description that identifies the activity content and instructors, the time devoted to each topic, and each date and location at which the activity will be offered;

8.1.5 With a calculation of the total credit hours and legal ethics/law practice management/ prevention, detection, and treatment of substance abuse and emotional distress/elimination of bias credit hours, as appropriate; and

8.1.6 Along with the appropriate activity approval fee.

8.2 EDUCATION ACTIVITIES PROVIDED BY THE CDAA AND THE CPDA

Education activities provided by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved education activities.

8.3 RETROACTIVE APPROVAL OF INDIVIDUAL EDUCATION ACTIVITIES

Retroactive approval may be granted in accordance with a procedure set forth by the Committee on Minimum Continuing Legal Education.

9.0 APPROVAL OF PROVIDERS

Approval may be extended in advance to a continuing education provider for one year for all of the education activities referred to in sections 4.1 and 4.2 presented by such provider which it certifies conform to 7.1. Approved providers are not required to seek approval pursuant to section 8.0 for the individual education activities sponsored while an approved provider.

9.1 STATEWIDE ASSOCIATIONS OF PUBLIC AGENCIES AND INCORPORATED, NONPROFIT ASSOCIATIONS OF ATTORNEYS

Statewide associations of public agencies and incorporated, nonprofit professional associations of attorneys shall be certified as State Bar approved providers upon completion of the application process.

9.2 REQUIREMENTS FOR APPROVAL OF PROVIDERS

Notwithstanding section 9.1, any person or group may be approved as a provider upon written application. All providers of continuing education activities, including in-house providers, are eligible to be approved providers. Applications for provider approval shall:

9.2.1 Be submitted at least 30 days, and preferably longer, in advance of the presentation of education activities;

9.2.2 Be submitted on a form provided by the State Bar;

9.2.3 Contain all information requested on the form;

9.2.4 Be accompanied by the appropriate provider approval fee; and

9.2.5 If received prior to February 1, 1995, demonstrate that during the two years immediately preceding its application, the applicant has sponsored at least four separate education activities, not including repeated presentations, that would have complied with section 7.1.

Applications received on or after February 1, 1995 shall demonstrate that during the two years immediately preceding its application, the applicant has sponsored at least four separate education activities, not including repeated presentations, that were approved pursuant to section 8.0 or section 9.0.

Education activities co-sponsored by an applicant that is not an approved provider and a State Bar approved provider shall not be counted towards such applicant's compliance with this requirement, unless such activity has been individually approved in accordance with section 8. In the latter situation each co-sponsor shall be individually responsible for complying with sections 7.1 and 7.2.

9.3 REVOCATION OF PROVIDER APPROVAL

The approval of any provider referred to in section 9.1 may be revoked only by a majority vote of the Board of Governors, after notice and hearing, and for good cause. The approval of all other approved providers may be revoked at any time when sufficient evidence demonstrates that the provider is not complying with section 7.1 or section 7.2.

9.4 APPROVAL OF SUBDIVISIONS OF APPROVED PROVIDERS

Subgroups or subdivisions (e.g. sections) of an approved provider need not obtain individual approval of an education activity which conforms to section 7.1, so long as the approved provider actively monitors such activity and publicly assumes full responsibility for ensuring compliance with the requirements of sections 7.1 and 7.2.

10.0 MEMBER REQUEST FOR EDUCATION ACTIVITY APPROVAL

A member may seek credit for attending an education activity that complies with the requirements of section 7.1 that has not been previously approved by completing a form provided by the State Bar and submitting it with the appropriate activity approval fee.

11.0 ACTIVITY AND PROVIDER APPROVAL FEE

Application for approval of an education activity or as a provider includes payment of the appropriate fee as provided in the Schedule of Minimum Continuing Legal Education Fees.

12.0 GENERAL COMPLIANCE PROCEDURES

12.1 COMPLIANCE CARD

Each member shall receive a Compliance Card approximately two months prior to the end of the member's compliance period. Each member shall complete the card by attesting under penalty of perjury that the member has complied with the education requirement or is exempt and the nature of the exemption. Such Compliance Cards must be returned to the address listed on the Compliance Card and must be postmarked no later than the day after the end of the member's compliance period.

12.2 MEMBER RECORDKEEPING REQUIREMENT

Each member shall maintain records sufficient to prove compliance with the education requirement and shall provide such records or proof of exempt status to the State Bar as the State Bar may require. The record required to be provided to the member by the provider pursuant to section 7.2.3 shall be a sufficient record of attendance at a participatory activity. A record of self-study activities that includes, as appropriate, the title, provider, time spent in the activity, subject matter of the activity, and the date on which the member engaged in the activity shall be a sufficient record.

13.0 NON-COMPLIANCE PROCEDURES

13.1 WHAT CONSTITUTES NON-COMPLIANCE

Non-compliance shall include any of the following:

13.1.1 Failure to complete the education requirement within the compliance period or any granted extension thereof;

13.1.2 Failure to provide attestation of compliance (including attestation of exempt status);

13.1.3 Failure to provide satisfactory evidence of compliance (including evidence of exempt status) within the prescribed time after a request by the State Bar;

13.1.4 Failure to satisfy the education requirement and furnish evidence of such compliance within 60 days after receipt of a Non-Compliance Notice; or

13.1.5 Failure to pay a non-compliance fee within the time prescribed after a request by the State Bar.

13.2 NON-COMPLIANCE NOTICE AND 60 DAY PERIOD TO ATTAIN COMPLIANCE

Members failing to comply will receive a Non-Compliance Notice stating the specific discrepancy and will be given 60 days from the date of notification to file a response clarifying the discrepancy or otherwise showing compliance with the requirements. Such notice shall contain the following language near the beginning of the notice, in capital letters:

IF YOU FAIL TO PROVIDE ADEQUATE PROOF OF COMPLIANCE WITH THE MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENT BY (INSERT DATE 60 DAYS FROM DATE NOTICE IS SENT), YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNTIL SUCH TIME AS ADEQUATE PROOF OF COMPLIANCE IS RECEIVED BY THE STATE BAR.

Members given 60 days to respond to a Non-Compliance Notice may use this 60 day period to attain the adequate number of credit hours for compliance. Credit hours earned during this period may only be counted toward compliance with the prior compliance period's requirement unless hours in excess of the requirement are earned, in which case the excess hours may be counted toward meeting the current compliance period's requirement.

13.3 NON-COMPLIANCE FEE

A member who, for whatever reason, is in non-compliance at the end of the compliance period shall pay a non-compliance fee upon request. Failure to pay the non-compliance fee within the prescribed time after a request by the State Bar shall constitute non-compliance with the requirements.

14.0 CONSEQUENCES OF NON-COMPLIANCE

14.1 ENROLLMENT AS INACTIVE MEMBER

A member failing to comply with the requirements after the 60 day period for compliance has expired shall be enrolled as an inactive member by the Board of Governors or an officer of the State Bar or his or her designee.

14.2 ENROLLMENT AS INACTIVE MEMBER ADMINISTRATIVE PROCESS

The enrollment pursuant to these rules and regulations is administrative in nature and no hearing is required.

14.3 ACCRUAL OF MEMBERSHIP FEE

Membership fees shall continue to accrue at the active rate against a member during the period he or she is enrolled as an inactive member pursuant to section 14.1.

15.0 REINSTATEMENT

15.1 PROCESS

The involuntary inactive enrollment of a member shall be terminated when the member provides proof of compliance with the minimum continuing legal education requirement (including payment of a non-compliance fee). A member may attain the necessary credit hours to meet the requirement for the period of non-compliance during the period the member is on inactive status. These credit hours may not be counted toward meeting the current compliance period's requirement. Credit hours attained during the period of non-compliance in excess of the number needed to satisfy the prior compliance period's requirement may be counted toward meeting the current compliance period's requirement.

15.2 TERMINATION OF INACTIVE ENROLLMENT ADMINISTRATIVE PROCESS

The termination of enrollment as an inactive member pursuant to these rules and regulations is administrative in nature and no hearing is required.

16.0 COMMITTEE ON MINIMUM CONTINUING LEGAL EDUCATION

16.1 COMPOSITION

A Standing Committee on Minimum Continuing Legal Education shall be established and shall be composed of 21 members. The members will be appointed by the Board of Governors and shall consist of six non-lawyer and 15 lawyer members.

16.2 STATE BAR STAFF

The State Bar shall employ such staff as may be necessary to perform the record-keeping, auditing, reporting, approval, and other necessary functions.

16.3 DUTIES

The Committee, subject to these rules and regulations, shall administer the minimum continuing legal education program. It may propose the Schedule of Minimum Continuing Legal Education Fees and changes to these rules and regulations and prepare forms consistent with these rules and regulations. All such proposed changes to the Schedule of Minimum Continuing Legal Education Fees or these rules and regulations shall be submitted to the Board of Governors for adoption.

17.0 CONFIDENTIALITY

A member's status relating to the minimum continuing legal education requirement, as it relates to the compliance, non-compliance, or exempt status of the member, is not confidential and shall be disclosed upon request of any interested person. Other information provided to the State Bar or its representatives pursuant to these regulations shall be available for

public inspection during business hours, except to the extent that disclosure is prohibited by law. Requests for lists of members shall be subject to the State Bar's Membership Lists Policy.

CALIFORNIA RULE OF COURT 958

AS ADOPTED BY THE CALIFORNIA SUPREME COURT ON DECEMBER 7, 1990

Rule 958. Minimum Continuing Legal Education

(a) [Statutory Authorization] This rule is adopted under section 6070 of the Business and Professions Code.

(b) [State Bar Minimum Continuing Legal Education Program] The State Bar shall establish and administer a minimum continuing legal education program, beginning on or after January 1, 1991, under rules adopted by the Board of Governors of the State Bar. These rules may provide for carry forward of excess credit hours, staggering of the education requirement for implementation purposes, and retroactive credit for legal education approved by the State Bar or offered by a State Bar approved provider completed prior to the effective date of the program.

(c) [Minimum Continuing Legal Education Requirements] Each active member of the State Bar (1) not exempt under Business and Professions Code section 6070, (2) not a full-time employee of the United States Government, its departments, agencies, and public corporations, acting within the scope of his or her employment, and (3) not otherwise exempt under rules adopted by the Board of Governors of the State Bar, shall, within 36 month periods designated by the State Bar, complete at least 36 hours of legal education approved by the State Bar or offered by a State Bar-approved provider. Eight of those hours shall address legal ethics or law practice management. One of the eight hours may instead, be satisfied by legal education in the civil and criminal remedies available for civil rights violations. However, members shall complete no less than four of the eight hours in legal ethics. Members may be required to complete legal education in other specified areas within the 36 hour requirement under rules adopted by the State Bar. Each active member shall report his or her compliance to the State Bar under rules adopted by the Board of Governors of the State Bar.

(d) [Failure to Comply With Program] A member of the State Bar who fails to satisfy the requirements of the State Bar's minimum continuing legal education program shall be enrolled as an inactive member of the State Bar under rules adopted by the Board of Governors of the State Bar.

(e) [Fee] The State Bar shall have the authority to set and collect appropriate fees and penalties. (Adopted, effective December 14, 1990. Amended effective December 25, 1992.)

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INTRODUCTION

This practice guide was developed by the faculty members for this program in consultation with the city attorneys department officers. With respect to the Brown Act, it is designed to assist municipal attorneys sort through the revisions to the Ralph M. Brown Act enacted in 1993, most of which become effective April 1994.

As this practice guide and the attached red-lined text of the Brown Act indicate, there are a number of candidates for "clean-up" legislation. As this practice guide went to print in January 1994, such clean-up legislation was anticipated but had not yet been introduced. The stated intention of those involved with the 1993 revisions to the Brown Act is to have clean-up legislation become effective when most of the 1993 changes become effective: April 1, 1994.

As a result, municipal attorneys consulting this guide should monitor the League's *Legislative Bulletin* (or their local agencies' equivalent) for information on the progress of the clean-up legislation. Such clean-up legislation is likely to affect a number of the statements made in this guide. Copies of clean-up legislation may be obtained from the state; call 916/445-2323.

Also, with respect to the Brown Act, the focus of this guide is the effect of the revisions to the Brown Act on the way cities do business. With respect to the Public Records Act, the focus is on selected issues arising under the act. This guide is not intended to be a comprehensive treatment of either act and, in the interest of clarity and brevity, certain issues may receive only a passing reference or may be omitted altogether.

This guide is offered for general information only and is not intended as legal advice or as a substitute for consultations with an agency's municipal attorney. Subtle variations in circumstances can produce differing results under the law. Reasonable city attorneys can disagree on what the law requires in a given situation. The League does not review these materials for content and has no view one way or another on the analysis contained in the materials.

Attorney readers are urged to read the statutes and cases cited in the guide and to reach their own conclusions and assure they reflect current law. Non-attorneys using this handbook are urged to always consult with their agency's attorney when confronting a situation which may have legal ramifications.

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I.

The Ralph M. Brown Act

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A.
Types of Meetings and Bodies Subject to Act

by Peter N. Brown, City Attorney, Carpinteria

1. Bodies Covered

a. In General

Previous law provided definitions of "legislative body" in four different sections of the Brown Act (former California Government Code sections 54952, 54952.2, 54952.3, and 54952.5). This created numerous interpretive difficulties, including the question of whether the general definition in section 54952 "overrode" more specific definitions. See, e.g., Freedom Newspapers, Inc. v. Board of Directors, ___ Cal. 4th ___, ___ Cal. Rptr. 2d ____, 93 Daily Journal D.A.R. 16426 (December 28, 1993).

The 1993 amendments gather all definitions of "legislative body" into one section to avoid this problem. See Cal. Gov't Code § 54952. That section continues prior law as to the governing body of the local agency constituting a legislative body. The definition of "local agency" remains unchanged. See Cal. Gov't Code § 54951.

The new law combines and consolidates the provisions of former Government Code sections 54952.2, 54952.3 and 54952.5. It eliminates the former distinction between bodies which exercise delegated authority and advisory bodies; all commissions, committees, boards or other bodies "whether permanent or temporary, decision-making or advisory" are now covered by the Brown Act, if they are created by "charter, ordinance, resolution, or formal action of a legislative body." "Formal action" includes actions by motion and the "designation" of members of the legislative body to serve on a board. Joiner v. City of Sebastopol, 125 Cal. App. 3d 799, 805, 178 Cal. Rptr. 299, ___ (1981).

b. Committees

The Attorney General and case law formerly recognized both an express and implied less-than-a-quorum exception to Brown Act compliance for committees of the legislative body which acted in an advisory capacity only. 32 Cal. Op. Att'y Gen. 240 (1958); 63 Cal. Op. Att'y Gen. 820 (1980); Henderson v. Los Angeles City Board of Education, 78 Cal. App. 3d 875, 144 Cal. Rptr. 568 (1978).

This exception is now eliminated for "standing committees . . . which have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of the legislative body." See Cal. Gov't Code § 54952(b). Non-standing advisory committees which lack both continuing subject matter jurisdiction and a fixed meeting schedule are exempt from Brown Act compliance.

Practice Tips: Determination that an advisory committee is not a "standing committee" with either continuing subject matter jurisdiction or a fixed meeting schedule may require careful judgment. A committee dealing with a single subject matter and meeting for only one meeting or a small number of ad hoc meetings may appropriately be deemed a committee exempt from Brown Act requirements.

If a committee meets on a regular basis, or deals with a variety of issues referred to it by the legislative body, the better view may be to treat it as a standing committee subject to Brown Act requirements. Meetings of permanent subcommittees of a city council are subject to the Brown Act.

Previous law exempted advisory committees which were made up of less than a quorum of the governing board of each of two agencies, if the members of each agency reported back solely to their own agency. See Joiner v. City of Sebastopol, 125 Cal. App. 3d 799, 178 Cal. Rptr. 299 (1981); 64 Cal. Op. Att'y Gen. 836 (1981). It is unclear whether an advisory committee composed of members from two legislative bodies will continue to remain exempt from Brown Act compliance if, under Government Code section 54952, it has a continuing subject matter jurisdiction or a fixed meeting schedule.

Advisory committees to a single individual, rather than to the legislative body, remain exempt from the Brown Act. 56 Cal. Op. Att'y Gen. 14 (1973).

c. Private Corporations

Previous law exempted private corporations from the Brown Act if legislative body members, although serving on the private corporation, did not represent the legislative body on the agency, or were not required to serve by their agency. See 67 Cal. Op. Att'y Gen. 487 (1984). It was often difficult in the past to determine whether a public official serving on an outside board was serving in an "official capacity" on that board. If the private corporation fell outside the express definitions of "local agency", it would also not be covered by Brown Act requirements. Yoffie v. Marin Hospital District, 193 Cal. App. 3d 743, 238 Cal. Rptr. 502 (1987).

The new law covers any private corporation which

- exercises delegated authority of the legislative body or

- receives funds from the legislative body and whose governing board contains a member of the legislative body appointed by the legislative body, even if that member does not represent the interests of the legislative body on the board.

See Cal. Gov't Code § 54952(c).

d. Hospital District Lessees

Lessees of property owned by a hospital district organized pursuant to Health and Safety Code section 32000 et seq. will be subject to Brown Act compliance when the lessee exercises "material authority" of the district. District powers are codified in the Health and Safety Code. See Cal. Health & Safety Code § 32121.

2. Members Covered

a. New Members

From the date of their election and prior to swearing-in, all public officials are now required to conform to the Brown Act. See Cal. Gov't Code § 54952.1. The central requirement here is that of not participating in a "meeting" unless it is open to the public. (For the definition of "meeting", see section I.A.3. beginning on page 20 of this practice guide.) As a result, a newly-elected member must be counted toward the majority of legislative body members, congregation of which will constitute a meeting.

Since "member of a legislative body" under Government Code section 54952.1 "includes, but is not limited to" elected officials, an argument can be made appointed officials (e.g., planning commissioners) may also be subject to Brown Act requirements prior to being sworn in.

Practice Tip: The city attorney should provide each newly-elected member with a copy of the Brown Act, see Cal. Gov't Code § 54952.7, and review Brown Act requirements with him or her. Prior to swearing-in, new members should not meet, in a combination that constitutes a quorum, with sworn members or with each other to discuss issues that are before or will come before the legislative body except in noticed public meetings.

b. Newly-Incorporated Cities

Section 54952.1 creates a particular problem for newly incorporated cities when city operations may not commence for a number of months after the election approving incorporation. Any organizational meeting of prospective councilmembers during such

interim period must be noticed and conducted in open session or an appropriately-noticed closed session. This raises particular difficulties when the new city may not even have in place the logistical mechanisms or staff to properly advertise meetings, post agendas, etc.

3. Meetings

a. In General

The Brown Act previously did not provide a definition of what constitutes a meeting, but the new law has provided a broad definition. A "meeting" includes

- face-to-face congregation of a majority of members of a legislative body to hear, discuss or deliberate on any item within the agency's subject matter jurisdiction

- any use of communication, personal inter-mediaries, or technological devices through which a majority of the members develop concurrence as to action to be taken on an item.

Cal. Gov't Code § 54952.2.

b. Informal Gatherings

A "meeting" may be formal or informal, and includes retreats, conferences, study groups, fact-finding meetings, or informal gatherings. Sacramento Newspaper Guild v. City of Sacramento, 263 Cal. App. 2d 41, 69 Cal. Rptr. 480 (1968).

The definition of a "meeting" is construed broadly. 61 Cal. Op. Att'y Gen. 220 (1978). Taking action or a vote is not a prerequisite; it is enough if a majority of the legislative body meets to discuss or deliberate upon city business. 63 Cal. Op. Att'y Gen. 820 (1980); 42 Cal. Op. Att'y Gen. 61 (1963).

c. Serial Meetings

Serial meetings, in which a quorum ultimate "deliberates" on an issue within the legislative body's subject matter jurisdiction, have long been prohibited. See Stockton Newspapers, Inc. v. Redevelopment Agency, 171 Cal. App. 3d 95, 214 Cal. Rptr. 69 (1980); 65 Cal. Op. Att'y Gen. 63 (1982). Government Code section 54952.2(a)(2) codifies Stockton by including as meetings face-to-face communications, use of the telephone or other technological devices, and use of "personal intermediaries" (e.g., an applicant who contacts legislative body members at the behest of a member). "E-mail" on the city's computer system would also be included.

The Attorney General has opined executive officer contacts on merely procedural items (scheduling of meetings, etc.) is not included within the prohibition. Cal. Att'y. General's Office, Open Meetings Law, p. 19.

d. Contacts With Lobbyists and Citizens

Government Code section 54952.2(b)(1) provides an exception to the definition of "meetings" for individual contacts between a member of the legislative body and a member of the public (e.g., lobbying activities by an applicant before the local agency). Given this language, would local agency regulations which prohibit ex parte citizen contact with legislative body members be preempted by the Brown Act? This seems unlikely; the Brown Act does not contain a express declaration of intent to preempt local regulation; presumably a city could adopt its own restrictions on ex parte contacts as a method of serving procedural due process values.

Practice Tip: City attorneys should prepare a memorandum to members of the city council and city advisory boards/commissions reviewing the serial meeting prohibition and explaining the prohibition on non-public communications among legislative body members. Legislative body members should be advised to caution citizens who meet with them to refrain from transmitting impressions or views of other legislative body members with whom the citizens have met.

e. Conferences, Community Meetings, Social Gatherings

Government Code sections 54952.2(b)(2), (3), and (4) codify exceptions for conferences, local community meetings, and social/ceremonial occasions. Previously, such functions were not considered to constitute "meetings" if the legislative body members did not discuss among themselves matters that are or potentially will be before them. 43 Cal. Op. Att'y Gen. 36 (1964), Attorney General Index Letter 75-97, 75-255.

The exception specifically enumerated in section 54952.2(b) probably should be interpreted as being representative, rather than the exclusive statement, of gatherings which are exempt from Brown Act requirements. Similar gatherings could include meetings of homeowners associations or non-profit boards of directors.

A problem is just the receipt of information plainly constitutes deliberations under prior law. See 42 Cal. Op. Att'y Gen. 61 (1963). However, Government Code sections 54952.2(b)(2), (3) and (4) clearly authorize the receipt of information if no discussion among legislative body members occurs.

If the members of the legislative body sit together at the gathering, or participate in the public discussions there, a greater possibility of a Brown Act violation is created. The broader the range of issues discussed at the function, the more likely it is Brown Act compliance will not be required. Meetings on issues of interest to the local community which are organized by the legislative body must comply with Brown Act requirements.

A perennial question is whether "team building" workshops which involve all or a majority of the council are exempt from the requirements of the act. No simple answer is possible. If the exercises stay strictly away from "hearing, discussing or deliberating" issues which are or could be before a city council, Brown Act compliance would not be required. Avoiding the discussion of such issues may be most possible if a number of jurisdictions hold a workshop together.

When a single agency holds its own workshop, however, it may be extremely difficult to prevent discussion of agenda issues from occurring, as council members attempt to "improve their communication skills" over the course of a day.

Practice Tip: The attendance of a majority of the city council at a meeting of its planning commission as audience members should be handled carefully. To ensure no violation occurs, council members should sit separately and should not participate actively in the meeting.

4. Meeting Technology

a. In General

Government Code section 54953 contains the familiar statement, unchanged from previous law, that all meetings of the legislative body must be open and public, and all persons permitted to attend such meetings except as expressly provided in the act.

b. Video Teleconferencing

Video teleconferencing may be used only to (i) receive public comment and (ii) conduct deliberations. Cal. Gov't Code § 54953(b). Based on analysis of AB 3191, the legislation in 1988 which first added section 54953, the Attorney General has concluded video teleconferencing cannot be used to establish a quorum or to register the vote of a member connected to the meeting by teleconferencing. Cal. Att'y. General's Office, Open Meetings Law, p. 20.

The Attorney General has also concluded, by authorizing video teleconferencing, the Legislature impliedly excluded other techniques, such as conference call, see Cal. Att'y. General's Office, Open Meetings Law, p. 20, to allow absent members of the legislative body to participate in a meeting. Presumably, the absent member could "listen in" by conference call if he/she did not participate in the meeting.

It is unclear whether section 54953 prohibits the use of telephone "call in" participation for the public during the public comment portion of the meetings. The more conservative view may be such "call in" participation is not permitted, because the act applies both to deliberations and to the receipt of public comment. But see Cal. Gov't Code § 54953.7 (authorizing local agencies to provide greater access to meetings than the minimal standards set forth in the act).

For a discussion of the audience's right to record meetings, please see section I.C.1.a. (pages 39 to 40) of this practice guide.

The 1993 amendments repealed the January 1, 1994 sunset clause contained in former law.

c. Secret Ballots

The only 1993 change in Government Code section 54953 is the addition of an express prohibition on secret balloting. Cal. Gov't Code § 54953(c). This prohibition will extend to closed sessions as well as open sessions. The vote of each legislative body member must be registered.

d. Mandatory Sign-Ins Prohibited

Existing law prohibits the local agency from requiring mandatory registration by members of the public in order to attend the meeting. See Cal. Gov't Code § 54953.3. Any attendance list posted at the entrance of the meeting room must clearly state signing the list is voluntary. See Cal. Gov't Code § 54953.3.

5. Locations of Meetings

For a discussion of the act's requirements regarding the location of meetings, including extra-territorial meetings, please see section I.B.1. (pages 25 to 28) of this practice guide.

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B.
Notice, Location and Agenda Requirements

by Leland Dolley, City Attorney, Alhambra and El Segundo
Kenneth D. Rozell, Burke, Williams & Sorensen, Los Angeles
Ariel Pierre Calonne, City Attorney, Palo Alto

1. Notice and Location Requirements

a. Regular Meetings

At least 72 hours before a regular meeting, the legislative body of a local agency must post an agenda containing a brief description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. Cal. Gov't Code § 54954.2. Regular meetings of a legislative body must be held at the time and place set by ordinance or resolution. Cal. Gov't Code § 54954.

Under revisions to the Brown Act, all regular and special meetings of the legislative body must generally be held within the jurisdictional limits of the local agency. Cal. Gov't Code § 54954. A local agency may meet outside its jurisdictional limits to:

- Comply with the state or federal law or court order.
- Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.
- Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. Any such meeting or discussion must take place within the jurisdiction of one of the participating local agencies and be properly noticed by all participating agencies.
- Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to California Government Code section 54956.9, when to do so would reduce legal fees or costs.

- Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

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

- 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.

Cal. Gov't Code § 54954(b).

b. Special Meetings

Under revisions to the Brown Act, special meetings may not be held outside the jurisdiction of the local agency unless one of the seven exceptions outlined above apply. Cal. Gov't Code § 54954(b). The revisions to the Brown Act also require each notice for a special meeting at which action is proposed to be taken on an item to provide an opportunity for members of the public to directly address the legislative body about that item prior to action being taken on that item. Cal. Gov't Code § 54954.3(b).

The remainder of the law relating to special meetings remains the same. Special meetings may be called at any time either by the presiding officer or a majority of the members of a legislative body. The meeting can be called by delivering personally or by mail written notice to each member of the legislative body, as well as to each local newspaper of general circulation, radio, and/or television station requesting notice. Cal. Gov't Code § 54956.

The notice must be received at least 24 hours before the time of the meeting set forth in the notice. The notice must also be posted 24 hours before the meeting in a location which is freely accessible to the public. Cal. Gov't Code § 54956.

The notice must include the time and place of the meeting, and identify the business to be transacted. Only the business set forth in the notice may be considered at the meeting. Notice is not required for those members of the legislative body who have waived it or who attend the meeting despite the absence of formal notice. Notice is required even if no action is taken at the special meeting. Cal. Gov't Code § 54956.

c. Adjourned Meetings

The amendments to the Brown Act made no changes to the law concerning adjourned meetings. Regular or special meetings may be adjourned to a specific date, time and place. Less than a quorum can adjourn a meeting. Cal. Gov't Code § 54955.

No notice is required unless a meeting is adjourned to a new time and date because all the members are absent, in which case the clerk must give the same notice as is required for a special meeting. Cal. Gov't Code § 54955.

The original 72 hours posting will be valid for taking action on agendized items at an adjourned meeting if that adjourned meeting is held within five days of the regular meeting. If not, re-posting is required. Cal. Gov't Code § 54954.2(b)(3).

If a public hearing is continued to a time less than 24 hours after the hour of adjournment, the order of continuance must immediately be posted on or near the door of the chambers. Cal. Gov't Code § 54955.1.

d. Emergency Meetings

The law concerning emergency meetings also was not affected by 1993 amendments to the Brown Act. An exception to the 24-hour notice requirement for special meetings is allowed in the case of an emergency situation involving matters which require prompt action due to the disruption or threatened disruption of public facilities. Cal. Gov't Code § 54956.5.

The Brown Act defines an "emergency situation" as follows:

- A work stoppage or other activity which, by a determination of a majority of the legislative body, severely impairs public health or safety or both, and/or;

- A crippling disaster which, by a determination of a majority of the legislative body, severely impairs the public health or safety or both.

Cal. Gov't Code § 54956.5.

In these circumstances, the presiding officer, or his or her designee, must notify each local newspaper of general circulation and radio or television station which has requested notice of special meetings by telephone one hour prior to the emergency meeting. Cal. Gov't Code § 54956.5.

No closed session is permitted during an emergency meeting. The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll-call vote, and any action taken at the meeting must be posted in a public place for a minimum of 10 days as soon after the meeting as possible. Cal. Gov't Code § 54956.5.

2. Agenda Requirements

The Brown Act requires the preparation of a written agenda for each regular or regular adjourned meeting of each legislative body, which must be posted at least 72 hours in advance of the meeting to which it relates. Cal. Gov't Code § 54954.2. Under revisions to the Brown Act, items to be discussed in closed sessions now must generally be disclosed on the agenda. Cal. Gov't Code § 54954.2.

a. Application

The agenda requirements apply to regular and adjourned regular meetings of legislative bodies. Cal. Gov't Code §§ 54954.2 and 54955.

b. Agenda Description

According to the revisions to the Brown Act, a brief general description of each item on the agenda generally does not need to exceed 20 words. Cal. Gov't Code § 54954.2(a). Although not specifically required by the Brown Act, the agenda descriptions outlined below for closed session items provide a "safe harbor" for legislative bodies and elected officials. Cal. Gov't Code § 54954.5.

If the legislative bodies or elected officials provide this information on the agenda (regardless of the specific format), then they cannot be held in violation of the agenda requirements of Government Code section 54954.2. Cal. Gov't Code § 54954.5. For information on when such closed sessions are appropriate, please see section I.E.4. (pages 60 to 65) of this practice guide.

(1) Applicants With A Criminal Record

When a local agency desires to hold a closed session relating to a license application from an individual with a criminal record (pursuant to California Government Code section 54956.7), the "safe harbor" description reads as follows:

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

Cal. Gov't Code § 54954.5(a).

(2) Real Estate Negotiations

When a local agency desires to hold a closed session relating to a real estate negotiations (pursuant to California Government Code section 54956.8), the "safe harbor" description for every item of business to be discussed is:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation) Negotiating parties: (Specify name of party (not agent)). Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

Cal. Gov't Code § 54954.5(b).

(3) Litigation

Before holding a closed session relating to litigation, the legislative body must state on the agenda or publicly announce the subsection of California Government Code section 54956.9 which authorizes the closed session. See Cal. Gov't Code § 54956.9. If the closed session is regarding litigation which has already been initiated, the legislative body must identify the litigation topic to be discussed prior to entering the closed session. See id.

The legislative body may avoid such disclosure if it publicly states to do so would jeopardize the local agency's ability to serve one or more unserved parties to the lawsuit or to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Cal. Gov't Code § 54956.9.

The "safe harbor" description for existing litigation is:

> CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
>
> Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

Cal. Gov't Code § 54954.5(c).

If the local agency fears disclosing the case name of existing litigation would jeopardize service of process or existing settlement negotiations, the "safe harbor" description is:

> CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
>
> Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

Cal. Gov't Code § 54954.5(d).

When a local agency desires to hold a closed session relating to pending litigation (pursuant to California Government Code section 54956.9), the "safe harbor" description for anticipated litigation is:

> CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
>
> Significant exposure to litigation: (Specify number of potential cases)

Cal. Gov't Code § 54954.5(c).

(4) Settlement Of Claims Covered By Joint Powers Authority For Insurance

When a local agency desires to hold a closed session relating to settlement of claims covered by a joint powers authority for insurance pooling (pursuant to California Government Code section 54956.95), the "safe harbor" description is:

LIABILITY CLAIMS Claimant: (Specify name unless unspecified pursuant to section 54961) Agency claimed against: (Specify name)

Cal. Gov't Code § 54954.5(d).

(5) Threat To Public Service Or Facilities; Public Employee Appointment; Public Employment And Performance Evaluations; and Public Employee Discipline, Dismissal Or Release

When a local agency desires to hold a closed session relating to a threat to public service or facilities (pursuant to California Government Code section 54957), the "safe harbor" description is:

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

Cal. Gov't Code § 54954.5(e).

When a local agency desires to hold a closed session relating to public employee appointment (pursuant to California Government Code section 54957), the "safe harbor" description is:

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

Cal. Gov't Code § 54954.5(e).

When a local agency desires to hold a closed session relating to public employment or performance evaluations (pursuant to California Government Code section 54957), the "safe harbor" descriptions are:

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position or title of employee being reviewed)

Cal. Gov't Code § 54954.5(e).

When a local agency desires to hold a closed session relating to public employee discipline, dismissal or release (pursuant to California Government Code section 54957), the "safe harbor" description is simply "PUBLIC EMPLOYEE DISCIPLINE/ DISMISSAL/RELEASE." Cal. Gov't Code § 54954.5(e). No additional information is required in connection with a closed session to consider discipline, dismissal, or release.

(6) Meeting With Labor Negotiator

When a local agency desires to hold a closed session relating to meeting with the local agency's labor negotiator (pursuant to California Government Code section 54957.6), the "safe harbor" description with respect to every item is:

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

Cal. Gov't Code § 54954.5(f).

If the closed session is to discuss negotiations related to an unrepresented employee, the safe harbor description is:

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

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

Cal. Gov't Code § 54954.5(f).

(7) Multijurisdiction Drug Law Enforcement Agency

When a local agency desires to hold a closed session relating to a multijurisdiction drug law enforcement agency (pursuant to California Government Code section 54957.8), the "safe harbor" description is simply "CASE REVIEW/PLANNING." Cal. Gov't Code § 54954.5(g).

(8) Hospital Medical Audit Committee, Quality Assurance Committee And Certain Actions By Hospital Board of Directors

When a local agency desires to hold a closed session relating to a hospital medical audit committee and quality assurance committee or by a hospital board of directors relating to staff privileges and trade secret (pursuant to California Government Code sections 37606, 37624.3 and 54962, and California Health and Safety Code sections 1461, 32106, and 32155), the "safe harbor" description with respect to every item is:

> REPORT INVOLVING TRADE SECRET
>
> Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)
>
> Estimated date of public disclosure: (Specify month and year)
>
> HEARINGS
>
> Subject matter: (specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

Cal. Gov't Code § 54954.5(h).

Practice Tips:

1. The safe harbor provisions of section 54954.5 apply only to regular meeting agendas, rather than special meeting notices. There seems to be no legislative intent or policy-based reason why the safe harbor provisions should not also apply to special meeting notices.

2. It would be convenient, although not strictly necessary, to include with the safe harbor listing the pending litigation closed session agenda statement required by section 54956.9 (which can otherwise be provided orally). Unfortunately, section 54954.5(c), under the title for "Existing Litigation," omits the required reference to section 54956.9(a). In addition, the safe harbor listing does not include the required agenda statements of "existing facts and circumstances" justifying an opinion there is significant exposure to litigation under section 54956.9(b)(1) and (2). See Cal. Gov't Code § 54956.9(b)(2)(B). The safe harbor thus includes a few minor pitfalls! This should be addressed through clean-up legislation.

3. In other contexts, "substantial compliance" is usually interpreted to mean compliance with each of the statutory requirements. See, e.g., Hall v. City of Los Angeles, 19 Cal. 2d 198, 120 P.2d 13 (1941). This means the only flexibility likely to be found in the section 54954.5 safe harbor is with the form of the agenda, rather than its contents. Likewise, it is certainly possible litigants will argue the "safe harbor" is actually the legislature's view of the minimum agenda notice required for closed sessions. Both these concerns strongly suggest close compliance with section 54954.5.

4. Although not required by the Brown Act, it would appear prudent to include, as an introductory note on each agenda, a statement that copies of the staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the office of the city clerk or some other specific office and are available for public inspection.

5. A notation should be added to each agenda that any person who has any questions concerning any agenda item may call the city clerk or some other designated city officer to make inquiry regarding the nature of the item described on the agenda.

3. Posting

Under existing law, each agenda must be posted in at least one location which is "freely accessible" to the public. Cal. Gov't Code § 54954.2(a).

Practice Tip: Care should be taken in selecting locations for posting to ensure they are in fact freely accessible. For example, a bulletin board located inside the city hall is not "freely accessible" since it is only available during business hours. Consideration should be given to the placement of a bulletin board outside of the city hall in an area where members of the public are permitted at all times.

4. Prohibited Actions

Generally, the legislative body cannot take action on any item which does not appear on the posted agenda. Cal. Gov't Code § 54954.2. There are, however, exceptions to this general rule.

a. "Emergency Situation"

Under existing law, an "emergency situation" is defined as being a work stoppage or other activity which severely impairs public health and/or safety or a crippling disaster which severely impairs public health and/or safety. Cal. Gov't Code § 54956.5.

Before proceeding to act upon an emergency item not appearing on the agenda, the legislative body must by a majority vote determine an emergency situation exists and prompt action is required by the legislative body. Cal. Gov't Code §§ 54954.2(b)(1) and 54956.5.

b. "Subsequent Need" Items

Under revisions to the Brown Act, the legislative body may still act upon an item not appearing on the agenda upon a favorable vote by two-thirds of the legislative body vote or by a unanimous vote if less than two-thirds but more than a quorum of its members are present. Cal. Gov't Code § 54954.2(b)(2). However, under changes to the Brown Act, the legislative body must make the finding there is a need for immediate action and need for action came to the attention of the local agency after the agenda was posted. Cal. Gov't Code § 54954.2(b)(2).

c. Held-Over Items

Items may be acted upon at a meeting if:

- The item appeared on a properly posted agenda for a previous meeting; and
- The previous meeting occurred not more than five calendar days prior to the date of the meeting at which the item is proposed to be considered; and
- The item was continued from the previous meeting to the meeting at which action is proposed to be taken.

Cal. Gov't Code § 54954.2(b)(3).

Under revisions to the Brown Act, members of the legislative body may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Government Code section 54954.3. Cal. Gov't Code § 54954.2. The Brown Act has also been revised to allow members of the legislative body to ask a question for clarification, provide a reference to staff or other resources for factual information or request staff to report back to the legislative body at a subsequent meeting concerning any matter. Cal. Gov't Code § 54954.2(a). The legislative body or any of its members may also direct staff to place a matter of business on a future agenda. Cal. Gov't Code § 54954.2(a).

5. Public Participation

Under existing law, each agenda for a regular public meeting must provide the public with an opportunity to address the legislative body on any item of interest that is within the subject matter jurisdiction of the legislative body. Cal. Gov't Code § 54954.3(a). The legislative body may not take action on any item raised by the public if that item did not appear on the agenda, unless allowed by California Government Code section 54954.2(b). Cal. Gov't Code § 54954.3(a).

The agenda does not, however, have to provide the public with an opportunity to address the legislative body on an item if

- The public already had the right to address a committee composed entirely of members of the city council on that topic before or during the time in which the committee heard the item and

- The item being considered has not substantially changed since it was last considered by the legislative body.

Cal. Gov't Code § 54954.3(a). However, under revisions to the Brown Act, every notice for a special meeting at which action is proposed to be taken on an item must provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on that item. Cal. Gov't Code § 54954.3(a).

For further discussion on public participation requirements under the Brown Act, please see section I.C.2. (pages 42 to 46) of this practice guide.

Practice Tips:

1. The legislative body may either allow public comment on agenda items at the time the item is called for discussion or at a predetermined time at the beginning of the meeting prior to consideration of the matter by the legislative body.

2. Reasonable time limits may be imposed on both the total amount of time allocated for public participation on particular items and on the time permitted to each individual speaker. The Attorney General has indicated the legislative body has wide discretion in limiting the time for public testimony. Depending on the circumstances, a limit of five minutes or less for each speaker would be valid. 75 Cal. Op. Att'y Gen. 89, 92 (1992).

3. Whenever possible, members of the public should be encouraged to submit their comments or objections in written form so the legislative body may consider the comments as part of the agenda packet.

6. Public Meetings And Hearings Before Increases In Taxes Or Assessments

Existing law currently requires a local agency hold a public hearing regarding any new or increased general tax or any new or increased assessment, with proper notice given at least 45 days prior to the hearing. Cal. Gov't Code § 54954.6. Revisions to the Brown Act add a new procedural requirement before a local agency may adopt any new or increased general tax or any new or increased assessment, with limited exceptions.

Under the new requirements, the legislative body must also conduct at least one public meeting at which local officials allow public testimony regarding the proposed new or increased general tax or new or increased assessment. Cal. Gov't Code § 54954.6(b)(1). The legislative body is to provide notice of this public meeting at the same time it provides notice of the public hearing.

The public meeting may take place no earlier than 10 days after the notice to the public has been given. Cal. Gov't Code § 54954.6(b)(1). The public meeting must also take place at least seven days prior to public hearing. Id.

The amount of information required to be disclosed in the notice required for new or increased general tax or any new or increased assessment has also been expanded. The new required information includes:

- If the tax is proposed to be increased from any previous year, the joint notice is to separately state both the existing tax rate and the proposed tax rate increase.
- The method and frequency for collecting the tax.
- The telephone number and address of an individual, office or organization that interested persons may contact to receive additional information about the tax

Cal. Gov't Code § 54954.6(c)(1).

The new requirements of this section went into effect on October 11, 1993. Cal. Gov't Code § 54954.6.

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C.
Public Participation

by John Wilson, City Attorney, Banning

1. Recording of Meetings

a. The Public's Right to Record

(1) Types of Recording Equipment

The public in attendance has the right to make an audiotape record of an open and public meeting. This right has been expanded by the recent amendments to include the right to make an audiotape, videotape, motion picture camera or still camera record of such meeting. Cal. Gov't Code § 54953.5(a).

This expansion of the right to record is an extension of the reasoning set out in Nevens v. City of Chino, 233 Cal. App. 2d 775, 44 Cal. Rptr. 50 (1965). The city had adopted a rule barring recording devices from the council chamber. Nevens challenged the rule because it prevented his use of a tape recorder to obtain a more accurate record of the proceedings upon which to base his later written reports. The court found, as a matter of policy,

> [a]ccuracy in reporting the transactions of a public governing body should never be penalized . . . If a shorthand record of such a meeting is more accurate than long hand notes, then the use of shorthand is to be approved (citations); and if the making of a tape record is a still better method of memorializing the acts of a public body it should be encouraged . . .

Nevens v. City of Chino, 233 Cal. App. 2d 775, 778, 44 Cal. Rptr. 50, 52 (1965). Undoubtedly, faced with the selection of recording technology available today, the fifth district would have provided the same protections for all of the kinds of recordings authorized by the 1993 amendments to the Brown Act.

(2) Limits of the Right to Record

Any person attending a public meeting has the right to record the proceedings in the absence of a reasonable finding by the legislative body that the recording cannot

continue without noise, illumination, or obstruction of view that constitutes or would constitute a disruption. Cal. Gov't Code § 54953.5(a).

Government Code section 54953.5(a) previously said

> . . . [a]ny person . . . shall have the right to record the proceedings in the absence of a reasonable finding of the legislative body of the local agency that such recording constitutes, or would constitute a disruption of the proceedings.

This has been amended to require a reasonable finding by the legislative body that

> . . . the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings.

Cal. Gov't Code § 54953.5(a).

The recent amendment narrows to more objective grounds the basis upon which recordation of a public meeting may be prohibited. This amendment would appear to preclude a finding based on nonphysical grounds such as breach of decorum, mental disturbance, or some sort of psychic interference, that the recording is disruptive of the proceedings. See Wrather-Alvarez Broadcasting v. Hewicker, 147 Cal. App. 2d 509, 305 P. 236 (1957). The amendment would also appear to be in line with the recognition in Nevens v. City of Chino of a broad right of the public to record public meetings in a nondisruptive manner. See 233 Cal. App. 2d 775, 44 Cal. Rptr. 50.

b. The Public's Right to Inspect Public Agency Tape Recordings

(1) Right of Public to Review Recordings

Any tape or film record of an open and public meeting made, for whatever purpose, by or at the direction of the local agency is subject to inspection by the public consistent with the requirements of the Public Records Act. Cal. Gov't Code § 54953.5(b).

This amendment generally codifies the findings set forth in a 1981 Attorney General's opinion regarding the availability for public inspection of the city clerk's audiotape recording of a public meeting. 64 Cal. Op. Att'y Gen. 317 (1981).

The amendment clarifies certain unresolved issues raised in the opinion. In the closing remarks, the Attorney General noted that it is not clear from the request for the opinion whether the tape recording of the city council meeting was made and retained solely for the purpose of preparing the minutes or whether it served the additional purpose of

preserving its information content for public reference. On this determination hinged the issue of whether the recording was a "record" and therefore subject to the limitations on destruction set forth in Government Code sections 6200 and 6201. 64 Cal. Op. Att'y Gen. 317, 326. The latest amendment to the Brown Act moots these questions by declaring that such recordings, no matter their purpose, constitute public records. It further sets forth a specific limitation on destruction of the record to not less than thirty days following date of the recorded proceedings.

(2) Maintenance Requirements for Recordings

A local agency is specifically authorized to destroy the tape or film record of the open and public meeting at any time which is more than 30 days following date of the taping or recording. Cal. Gov't Code § 54953.5(b).

This provision is in response to the analysis contained in an Attorney General's opinion concerning the status as a "public record" of the tape record of a public meeting made by the local agency for its internal use. See 64 Cal. Op. Att'y Gen. 317 (1981). That opinion is discussed under subsection I.C.1.b. immediately above.

(3) Mechanics of Inspection

Inspection of the audiotape or videotape record must be made available to the public for free on equipment provided by the local agency.

The Attorney General has indicated in relevant part, ". . . a person's right to inspect a public record includes the right to gain access to the informational content of such record without having to provide the mechanical equipment necessary to gain such access . . ." See 64 Cal. Op. Att'y Gen. 317, 320 (1981). This determination now has specific application to tape or film records of public meetings made by or for the public agency through the addition of section 54953.5(b) to the Brown Act.

The right of the public to inspect the local agency's tape of its open meeting is a different issue from the right of the public to a duplicate of the tape. Having come to the conclusion that for purposes of public access the tape constitutes a public record, the Attorney General goes on to note

> [Government Code] section 6256 expressly provides that the right to receive a copy of a public record includes the right to be provided with an "exact copy" unless this is impractical. An exact copy of a tape recording is a duplicate tape with the same information recorded thereon. Whether the city must provide such a duplicate tape on payment of the requisite fee depends on whether it is practical for the city to do so . . . We conclude that the right to receive a copy of a tape recording which is a public record includes the right either to be provided with a duplicate copy of the tape

> provided by the public agency on payment of the requisite fee where this is practical or to record the sound on equipment provided by the requester while the original tape is being played in response to a request to inspect the tape where it is impractical for the city to provide such duplicate.

64 Cal. Op. Att'y Gen. at 320-321.

The above was written in the context of an audiotape record of the proceedings. As to the applicability of this reasoning to a videotape record, some interpretation is required. The challenge arises based on the assumption that at the present time it is uncommon for a local agency to have in its possession equipment for the copying of videotapes. It is therefore impracticable to duplicate a videotape upon payment of the costs of duplication by a requester.

This leaves the option implied in Government Code section 6256 and the Attorney General opinion that the local agency provide a duplicate of only the audio portion of the videotape. This option is made more attractive if, under section 54956.6 of the Government Code the cost of a video duplication machine may not be recovered through the duplication fee.

Practice Tip: A legislative body should adopt rules for the conduct of its meetings and for the maintenance of its tapes. The rules should be intelligible by and available to the public. The local agency should scrupulously adhere to its rules.

2. Opportunity for Public to Address Legislative Body

a. The Public's Rights

(1) The Right to Address and Special Meeting Notice Requirements

The notice for a special meeting at which action is proposed to be taken must provide an opportunity for the public to directly address the "legislative body". See Cal. Gov't Code § 54954.3(a).

This section is to be read in conjunction with the section in the Brown Act relating to calling and noticing special meetings. See Cal. Gov't Code § 54956. That section requires the notice of any special meeting specify the time and place of the meeting and the business to be transacted. See Cal. Gov't Code § 54956.

Amended section 54954.3 incorporates into the special meeting notice requirements the existing requirement that all agenda for regular meetings provide the opportunity for members of the public to directly address the legislative body. Cal. Gov't Code § 54954.3(a).

In Frazer v. Dixon Unified School District, 18 Cal. App. 4th 781, 22 Cal. Rptr. 641 (1993), the court reviewed the right of the public to participate in a special meeting called by a school board. The court noted that by the simultaneous amendment in 1986 of Education Code section 35154 relating to agenda requirements for school board meetings and Government Code section 54956, ". . . the Legislature has eliminated any right the public may have had before the 1986 amendments to place items on the agenda of, and to address, special meetings of a school board." Frazer, 18 Cal. App. 4th at 791, 22 Cal. Rptr. at 648-649. This amendment to section 54956 would appear to end this line of reasoning.

Note the change in the definition of the body to which these rules now apply. The change is from "council or board" to "legislative body". That change is discussed in part I.A. (pages 3 to 5) of this practice guide.

(2) Issues Which the Public May Address at Special Meetings

The public must be afforded the opportunity to directly address the legislative body concerning the item which is the subject of the special meeting prior to the legislative body taking action on the item. See Cal. Gov't Code § 54954.3(a). This right of the public to address the legislative body concerning the "item" which is the subject of the special meeting is distinguished from the right of the public to address "any item of interest to the public" which applies in a regular meeting. See id.

This is consistent with the severely limiting prohibition contained in section 54956, which says no other business may be considered at the special meeting which has not been listed on the notice. See Cal. Gov't Code § 54956. This is as compared to the language in section 54954.3 which prohibits action on any item not appearing on the agenda. See Cal. Gov't Code § 54954.3.

b. The Public's Right to Address Performance of the Local Agency and Its Officials

(1) Right of Public to Criticize

The legislative body must allow public criticism of the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body. See Cal. Gov't Code § 54954.3(c).

This matter may best be viewed in the context of the "public forum doctrine or analysis." See Clark v. Burleigh, 4 Cal. 4th 474, 482-485, 14 Cal. Rptr. 2d 455, 459-461 (1992); Drexel v. Mann, ___ Cal. App. 4th ___, ___, 278 Cal. Rptr. 887, 892-893 (1991), rev. dismissed (March 25, 1993). In Perry Ed. Assn. v. Perry Local Educators' Assn., 460 U.S. 37, 45-46, 103 S.Ct. 948, 954-956, 74 L. Ed. 2d 794, ___ (1983), the Supreme Court identified three types of government property:

- traditional public fora, such as public streets and parks;
- public property which the state has opened for use by the public as a place for expressive activity, such as meeting facilities; and
- nonpublic fora.

See Drexel v. Mann, ___ Cal. App. 2d ___, ___, 278 Cal. Rptr. 887, 892 (1991), rev. dismissed (March 25, 1993).

The second category may be further defined as a public forum created by government designation of a place or channel of communication for use by the public at large for assembly and speech, for use by certain speakers, or for the discussion of certain subjects. The fact that the forum is limited permits the state to exclude that which is not germane.

The state may regulate content in order to preserve the purpose of the forum. But, so long as the state retains the open character of the facility, it is bound by the same standards as apply in a traditional public forum. Reasonable time, place and manner regulations are permissible, and a content-based prohibition must be narrowly drawn to effectuate a compelling state interest. In addition, any restrictions on speech in a public forum must leave open ample alternative channels for communication. Id. at 892.

Government Code section 54954.3 treats the meeting area, at least during the period in which it is being utilized for a meeting covered by the Brown Act, as a limited public forum. In subdivision (a), the persons permitted to speak are "members of the public". The topics they are permitted to address are "any item of interest to the public . . . that is within the subject matter jurisdiction of the legislative body". As discussed above, the permissible topics are more limited when the meeting is a special meeting.

There is some implication of an authority to regulate public forum speech based on content contained in subdivision (b) of section 54954.3, in that the section states the legislative body may regulate

- the total amount of time allocated for public testimony,
- the total amount of time by issue, and
- the amount of time per speaker.

See also, Cal. Gov't Code § 54957.9 (disorderly conduct and clearing of room).

In the adoption of subdivision 54954.3(c) the state has exercised its authority to protect the right of "members of the public" to offer criticism of the public agency within the forum.

At issue are the questions raised by the case of White v. City of Norwalk, 900 F.2d 1421 (9th Cir. 1990). In that case the ninth circuit upheld against a facial challenge on the grounds of overbreadth and vagueness, an ordinance which prohibited any person who addresses the city council from making ". . . personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public."

The jury decided for Norwalk on the facts, finding White was found out of order because he was becoming repetitious and not because of the content of his speech. However, the following quotations from the case (here stated out of context) fairly define the conflict as it is played out in public meetings:

> . . . The defendants contend that White was ruled out of order for being unduly repetitive and was escorted to his seat for refusing to stop talking after the Major (sic) ruled him out of order and asked him to desist. . .
>
> . . . White alleged that he was speaking about a legal matter involving a city official. He claimed that he was told that the subject was a personal matter and that he should submit his information in writing. He alleged that when he attempted to take a written statement out of his pocket to distribute to the Council, he was immediately ruled out of order and removed from the room . . . .

See White v. City of Norwalk, 900 F.2d at 1423.

Whether the new regulation addresses the potential for overregulation of speech raised in White is questionable. The legislative body, arguably, continues to have the right under subdivision (b) to minimize the time available to the public for criticism not related to an item on the agenda. Under public fora analysis, so long as there remain ample alternative channels for communication (e.g., a letter to the city council), such regulation should withstand a first amendment challenge.

Further, based on the holding in White, the language of section 54954.3(b) and the language of Government Code section 36813, the Attorney General has concluded ". . . section 54954.3 vests the legislative body of a local public agency with wide discretion concerning the adoption of regulations limiting the time at its meetings for public testimony on each issue and for each speaker . . ." 75 Cal. Op. Att'y Gen. 89, 92 (1992).

To the extent that any legislative body may wish to require the public to use other channels than a public meeting to air their criticisms of local agency operations or its officials, this option has been eliminated. It otherwise appears that such criticism remains subject to the same degree of regulation as for other speech in a limited public forum.

(2) Privilege or Protection for Expression

Section 54954.3(c) says the new language does not conferr upon the speaker any privilege or protection for expression beyond that otherwise provided by law. See Cal. Gov't Code § 54954(3)(c). The right to publicly criticize a public official is not the right to slander that official:

> . . . [L]iability under New York Times requires clear and convincing proof of a knowing falsehood or of reckless disregard for truth. (citations) Recovery by public officials in defamation actions is constitutionally barred unless evidence is produced "of either deliberate falsification or reckless publication 'despite the publishers awareness of probable falsity' . . ."

McCoy v. Hearst Corp., 42 Cal. 3d 835, 860, 231 Cal. Rptr. 518, 534-535 (1986).

> Notably, there are few California decisions which have considered who is a "public official" for purposes of the New York Times rule. Those courts have nevertheless consistently applied Justice Brennan's analysis in Rosenblatt (citation) to "persons who are in a position significantly to influence the resolution of [public] issues," "to those among the hierarchy of governmental employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs," and "[w]here a position in government has such apparent importance that the public has independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees."

Mosesian v. McClatchy Newspapers, 205 Cal. App. 3d 597, 606-607, 252 Cal. Rptr. 586, 592 (1988).

Practice Tip: The legislative body should adopt a set of rules for the conduct of its meetings. The rules should be intelligible by and distributed to the public. The legislative body should scrupulously adhere to the rules regardless of the content of the speech.

3. Use of Facility Allowing Discrimination

a. Accessibility by Disabled Persons

The Brown Act prohibits the holding of any meeting at any facility which is inaccessible to disabled persons. Cal. Gov't Code § 54961.

Section 54961 previously prohibited the conduct of any meeting in any facility that affirmatively prohibited the admittance of a person because of that persons race, religious creed, color, national origin, ancestry or sex. To this has been added the prohibition against conducting a meeting in any facility that is in the state of being inaccessible to disabled persons.

This is an acknowledgement of California Civil Code section 54.1(a) which require "full and equal access as other members of the general public" to the full range of public facilities. This section otherwise raises issues which are to be addressed in bringing facilities into compliance with the Uniform Federal Accessibility Standards, 49 C.F.R. 31528, or, the regulations implementing Title II of the Americans With Disabilities Act, 28 C.F.R. Part 35.

Accessibility standards for public buildings are set out in Government Code sections 4450 et seq. "Access to Public Building By Physically Handicapped Persons". Standards for "public accommodations" are set out in Government Code sections 19955 et seq. ("Access to Public Accommodations by Physically Handicapped Persons".)

4. Fees for Entry to Public Meeting

A "meeting" may not be held in a facility from which members of the public are excluded if they do not make a payment or purchase. See Cal. Gov't Code § 54961.

Practice Tip: Work closely with all persons in charge of selecting and inspecting sites for public meetings to insure that they understand the obligations of the local agency under this section. No longer is it a matter of being out of compliance with the ADA. Now, failure to accommodate disabled persons exposes the local agency to the full panoply of penalties for a violation of the Brown Act.

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D.
Disclosure of Written Materials and Reporting Out From Closed Sessions

by Jayne W. Williams, City Attorney, Oakland
Ariel Pierre Calonne, City Attorney, Palo Alto

1. Relationship of Brown Act to Public Records Act

An analysis of the provisions of the Brown Act regarding disclosure of written materials must be made in conjunction with the applicable provisions of the California Public Records Act. See Cal. Gov't Code §§ 6250 et seq. The Public Records Act, which was enacted in 1968, provides that "every person has a right to inspect any public record except as hereafter provided." Cal. Gov't Code § 6253(a).

The act exempts certain public records from disclosure including "(r)ecords the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." Cal. Gov't Code § 6254(k). The Public Records Act has made the attorney-client privilege applicable to public records. Cal. Evid. Code §§ 950 et seq.; Roberts v. City of Palmdale, 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330 (1993).

2. Distributed Materials as Public Records

a. In General

Government Code section 54957.5 establishes the general public record requirements for materials which are distributed to the legislative body. Prior to its amendment, the Brown Act said writings distributed to all or a majority of the members of a legislative body, by a member, officer or employee of such body for consideration at a public meeting, are public records.

The amendment now makes such writings distributed to the legislative body by any person public records and requires that they be made available for inspection and copying "without delay." See Cal. Gov't Code § 54957.5(a). If a record is accessible under the Public Records Act, the fact that it has not yet been distributed to the legislative body cannot be cited as a reason to delay its release upon request.

b. Documents Exempt From Disclosure Under the Public Records Act

Any writing exempt from disclosure under certain sections of the Public Records Act is not subject to this requirement. See Cal. Gov't Code § 54957.5(a). These sections are 6253.5 (relating to intitiative, referendum and recall petitions), 6254 (the general list of exempted records, including certain kinds of preliminary drafts, litigation records, personnel or medical files, law enforcement and other records) and 6254.7 (relating to certain kinds of air pollution information, code violations and trade secrets).

In particular, the Brown Act does not abrogate the attorney-client privilege as to written materials distributed for discussion at a public meeting. The California Supreme Court has recognized that public entities need confidential legal advice to the same extent as do private sector clients. See Roberts v. City of Palmdale, 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330 (1993).

c. Writings Distributed During Meetings

If writings are distributed during a meeting, they must be available for public inspection immediately if prepared by the local agency, or after the meeting if prepared by some other person. Cal. Gov't Code § 54957.5(c).

d. Copy Charges

Ordinary copying fees may be charged for these public records. Cal. Gov't Code § 54957.5(d). Pursuant to the provisions of the Public Records Act, the charges must cover the "direct costs of duplication" or a statutory fee. Cal. Gov't Code § 6257. Extraordinary costs associated with the duplication of the document such as staff costs to locate and retrieve the document in question are not recoverable. See State Board of Equalization v. Superior Court, 10 Cal. App. 4th 1177, 13 Cal. Rptr. 2d 342 (1992).

Practice Tip: The legislative body should develop a procedure to assure written materials submitted directly to the legislative body by persons other than a member, officer or employee of the body are also provided to the city clerk and other appropriate staff for filing, public inspection, copying and distribution, as appropriate.

3. Closed Sessions for Litigation Based on "Existing Facts and Circumstances"

a. In General

Government Code section 54956.9 has been amended to say the legislative body may meet in closed session if, based on existing facts and circumstances, there is significant exposure to litigation. This section sets forth the criteria to be used in determining whether "existing facts and circumstances" are present to justify a closed session.

b. Records On Threats of Litigation

A closed session is appropriate if there has been

> [a] statement threatening litigation made by a person outside an open and public meeting made on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous record or other record of the statement prior to the meeting which record shall be available for public inspection pursuant to Section 54957.5.

See Cal. Gov't Code § 54956.9(b)(2)(E) (emphasis added).

This provision gives little guidance on how the record of the statement is to be prepared and presented, except that it says

> [t]he 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.

See Cal. Gov't Code § 54956.9(b)(2)(E).

Practice Tip: The legislative body should establish a policy which provides for its legal counsel to review any "record" made pursuant to California Government Code section 54956.9(b)(2)(E). The record should be filed with the city clerk or other appropriate person prior to the meeting to provide for public inspection. There is no requirement that the record be distributed to the public as a part of the closed session notice.

4. Action And Vote Disclosure In Open Session After The Closed Session

After any closed session, the legislative body must reconvene in open session and make a public report of specified actions, and the vote or abstention of every member present. Cal. Gov't Code § 54957.7(b). The reports may be made orally or in writing. Cal. Gov't Code § 54957.1(b).

Practice Tip: The interrelationship of sections 54957.7 and 54957.1 is neither totally consistent nor entirely logical in view of the statutory objectives of the 1993 amendments. Section 54957.7(b), for example, apparently requires the legislative body to reconvene in open session after a closed session even if no disclosure is required under section 54957.1. Likewise, although section 54957.1(b) appears to authorize written closed session reports, possibly as late as the next business day following the meeting (see section 54957.1(c)),

sections 54957.1(a) and 54957.7(c) apparently call for oral "announcements" at the public meeting during which the closed session is held. A very literal interpretation and application of the 1993 amendments seems prudent until clean-up legislation can go forward.

a. Contents Of The Closed Session Report

Closed session disclosure is required in one of two forms:

- A public report made orally or in writing during same meeting as the closed session, or
- Disclosure upon inquiry thereafter.

The required reports or disclosures are specified in section 54957.1 as set forth below. These reporting and disclosure statements are the minimum requirements; cities may choose to provide more information when to do so would not harm the city's interests. See Cal. Gov't Code § 54957.1(b).

A checklist of the requirements for closed session reports occurs in Appendix A of this practice guide. [A sample format for reports are included in Appendix B of this practice guide.]

(1) Approval Of Agreements Concluding Real Estate Negotiations

Agreements concluding real estate negotiations, see Cal. Gov't Code § 54956.8 (authorizing such closed sessions), are to be reported after the agreement is final. Cal. Gov't Code § 54957.1(a)(1).

If city action finalizes the agreement, the city must report:

- The approval action
- Voting tally
- Substance of the agreement

The report must be made after the closed session, in open session, during the same meeting.

If the other party must finalize the agreement, no report is required immediately after the closed session. However, ***upon inquiry*** by any person, the city must disclose:

- The approval action
- Voting tally
- Substance of the agreement

If no inquiry is made, the city must make the above disclosure as soon as the other party has informed the city of its approval. Cal. Gov't Code § 54957.1(a)(1).

(2) Approval Of Litigation Defense, Appellate Review, Or Amicus Curiae Participation

After holding a closed session pursuant to Government Code section 54956.9, the city must report:

- The approval action
- Adverse parties (if known)
- Substance of the litigation
- Voting tally

Cal. Gov't Code § 54957.1(a)(2). The report must be made after the closed session, in open session, during the same meeting. Cal. Gov't Code § 54957.7.

(3) Approval Given To Initiate Or Intervene In Litigation

This reporting duty for action initiating litigation or intervention has two stages, one applicable *before* the suit is "formally commenced" and the other *after*. Cal. Gov't Code § 54957.1. And, after the suit is filed, no further reporting may be required in specified circumstances when the city's interests would be compromised as set forth below. See Cal. Gov't Code § 54957.1(a)(2).

Before the action has been commenced, the city must report:

- That direction to initiate or intervene in an action has been given

- That the action, defendants and other particulars shall be disclosed to any person upon inquiry once the action is formally commenced, unless disclosure would jeopardize the city's ability to serve process or to conclude existing settlement negotiations to the city's advantage

Cal. Gov't Code § 54957.1(a)(2). The report must be made after the closed session, in open session, during the same meeting. Cal. Gov't Code § 54957.7.

After the action has been formally commenced, the reporting requirements vary according to whether disclosure would jeopardize the city's ability to serve process or to conclude existing settlement negotiations to the city's advantage. Cal. Gov't Code § 54957.1(a)(2).

If disclosure **would not** jeopardize the city's ability to serve process or to conclude existing settlement negotiations to the city's advantage, the city must disclose:

- The approval action
- Voting tally
- Defendant(s)
- Other particulars, presumably including the substance of the litigation

Cal. Gov't Code § 54957.1(a)(2). Disclosure is required only upon inquiry by any person. Cal. Gov't Code § 54957.1(a)(2).

PRACTICE TIP: Closed session reporting is perhaps the most significant change brought about by the 1993 amendments. Compliance with these requirements will be closely watched by the public and press.

The delayed disclosure provisions pose a significant administrative burden, as well as a new record keeping requirement. Implementation of these provisions may well prove that written closed session reports are the simplest means of keeping track of closed session actions and voting records. Moreover, city attorneys should confer with the city clerk to make arrangements for proper closed session record keeping. One option is, of course, to maintain a minute book pursuant to section 54957.2.

If disclosure **would** jeopardize the city's ability to serve process or to conclude existing settlement negotiations to the city's advantage, no disclosure is required until process has been served or settlement negotiations have been concluded. Cal. Gov't Code § 54957.1(a)(2). Thereafter, upon inquiry by any person, disclose the following:

- The approval action
- Voting tally
- Defendant(s)
- Other particulars, presumably including the substance of the litigation

(4) Approval Of Pending Litigation Settlements

Pending litigation settlements are to be reported after the settlement is final. Cal. Gov't Code § 54957.1(a)(3). If city action finalizes a signed settlement offer, the city must report:

- The acceptance action
- Voting tally
- Substance of the agreement

Cal. Gov't Code § 54957.1(a)(3)(A). The report must be made after the closed session, in open session, during the same meeting. Cal. Gov't Code § 54957.7(b).

If the other party or a court must finalize the settlement, no report is required. However, as soon as the other party has informed the city of its approval, city must *upon inquiry* disclose:

- The fact of the approval action
- Voting tally
- Substance of the agreement

Cal. Gov't Code § 54957.1(a)(3)(B).

(5) Disposition Of Joint Powers Agency Claims

When disposing of claims against a joint powers agency in closed session, see Cal. Gov't Code § 54956.95, the agency must report:

- The voting tally
- Name of the claimant
- Name of the local agency claimed against
- Substance of the claim
- Monetary amount approved for payment and agreed upon by the claimant, if any

Cal. Gov't Code § 54957.1(a)(4). The report is to be made "as soon as [disposition of the claim is] reached". Cal. Gov't Code § 54957.1(a)(4). The statute does not specify whether an open session report must be made or whether disclosure upon inquiry is sufficient. See Cal. Gov't Code § 54957.1(a)(4).

(6) Actions Affecting The Employment Status Of Public Employees

After a closed session pursuant to Government Code section 54957, the city must report:

- Any action taken to appoint, employ, dismiss, accept the resignation of or otherwise affect the employment status of a public employee
- Voting tally
- Title of the position
- Any change in compensation

Cal. Gov't Code § 54957.1(a)(5).

PRACTICE TIP: The reporting requirement for "any change in compensation" highlights, but does not resolve, the tension between section 54957 closed sessions to "evaluate performance" and the common law prohibition against setting salaries in closed session. See San Diego Union v. City Council, 146 Cal. App. 3d 947, 196 Cal. Rptr. 45 (1983). San Diego Union held that only the threshold decision of whether a salary change (an increase in that case) was warranted could be discussed in a section 54957 closed session. Although "oblique references" to salary were permissible in closed session, according to the court of appeal, the public interest in municipal budgetary matters demanded that salaries be established in open session.

It may be arguable that the new reporting requirement implicitly authorizes, or at least assumes the existence of authority for, discussing and establishing salaries in closed session. On the other hand, sections 54957 and 54957.6 were also amended to specifically bar "discussions of a local agency's available funds, funding priorities, or budget", language which closely mimics San Diego Union. See San Diego Union, supra, 146 Cal. App. 3d at p. 956, 196 Cal. Rptr. at p. 49. It is difficult to see how salaries can be discussed or established, and in particular increased, without considering "available funds", etc.

One approach that at least partially reconciles San Diego Union, section 54957 and section 54957.1 would be to assume that the "changes in compensation" which must be reported are reductions resulting from an authorized closed session disciplinary action, even though one may initially question the rational basis for distinguishing a performance merit-based salary increase (the challenged closed session action in San Diego Union) from a disciplinary salary reduction. One thing is clear – there is no official (or unofficial) legislative history which even remotely suggests routine salary setting can now be done in closed session. Caveat: If closed session changes in compensation are not authorized, the new reporting requirement may be nothing more than a means of self-reporting Brown Act violations.

The timing of such reports of closed sessions depends on whether a dismissal or non-renewal of an employment contract is subject to further administrative remedies. See generally Cal. Gov't Code § 54957.1(a)(5). If it is, the report must be deferred until the first public meeting following the exhaustion of administrative remedies. Cal. Gov't Code § 54957.1(a)(5). For all other employment actions, the report is made after the closed session, in open session, during the same meeting. Cal. Gov't Code § 54957.1(a)(5). See also Cal. Gov't Code § 54957 (new notice requirements for section 54957 closed sessions).

(7) Approval Of Agreements Concluding Labor Negotiations

After closed sessions held pursuant to Government Code section 54957.6, the city must report:

- The item approved
- Voting tally
- Other party

Cal. Gov't Code § 54957.1(a)(6). The report must be made after the agreement is final and has been accepted or ratified by the other party. The statute does not specify whether an open session report must be made or whether disclosure upon inquiry is sufficient. See Cal. Gov't Code § 54957.1(a)(6).

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E.
Closed Sessions

by Ariel Pierre Calonne, City Attorney, Palo Alto

1. Introduction

Closed sessions (sometimes archaically referred to as "executive sessions") are meetings conducted in private without the attendance of the public or press. They are permitted for specified purposes as part of a regular or special meeting, but not during an emergency meeting. Cal. Gov't Code § 54956.5; 43 Cal. Op. Att'y Gen. 79 (1964). This area of the Brown Act was substantially revised in 1993.

2. Agenda Notice Requirements

Regular meeting agendas and special meeting notices must include a description of the matters to be discussed in closed session. Cal. Gov't Code §§ 54952.2, 54956. Closed session agenda descriptions for regular meetings may follow a prescribed statutory format; substantial compliance with this format creates a "safe harbor" against challenges to the adequacy of the notice. Cal. Gov't Code § 54954.5. For a further discussion of these provisions, please see section I.B.2.b. (pages 28 to 34) of this practice guide.

3. Subject Matter Announcements In Open Session

a. In General

Before conducting any closed session, the legislative body must announce in open session the items to be discussed. Cal. Gov't Code § 54957.7(a). The disclosure may be a simple reference to the agenda item number or letter. The closed session may be conducted (and the announcement may be given) at a location different from that of the regular meeting. Cal. Gov't Code § 54957.7(c).

b. Real Estate Negotiations

Before conducting any real estate negotiations closed session, the legislative body must hold an open session during which it identifies the property that the negotiation may concern and the persons with whom the local agency negotiator may negotiate. Cal. Gov't Code § 54956.8.

c. Pending Litigation

Before holding a pending litigation closed session, the legislative body must state on the agenda or announce publicly which subdivision of section 54956.9 authorizes the closed session. Cal. Gov't Code § 54956.9(c). If section 54956.9(a) is the authority (existing litigation on file), the case must be identified by title or otherwise, unless to do so would jeopardize service of process or settlement negotiations. Cal. Gov't Code § 54956.9.

d. Personnel Sessions On Specific Complaints Or Charges

Before conducting any closed session on specific complaints or charges brought against an employee, the affected employee must be delivered at least 24 hours written notice of his or her right to have the charges heard in open session. Cal. Gov't Code § 54957. Failure to deliver the notice renders any disciplinary or other action "null and void."

Practice Tip: The 1993 amendments apparently require oral "announcements" of the closed session items in addition to the required agenda notice. See Cal. Gov't Code § 54957.7(c). Under former law, some cities used detailed agenda listings in lieu of an oral statement before or after the closed session. This practice is no longer permitted. See Cal. Gov't Code § 54956.9 with respect to using the agenda to identify pending litigation closed sessions.

4. Major Reasons for Permissible Closed Sessions

a. To Instruct Negotiators Of Real Property Transactions

Local agencies negotiating real property transactions may meet in closed sessions to instruct their negotiators. Cal. Gov't Code § 54956.8.

b. To Instruct Negotiators Who Are Meeting And Conferring With Represented And Unrepresented Employees

Closed sessions are permitted to instruct negotiators who are meeting and conferring with represented or unrepresented employees. Cal. Gov't Code § 54957.6(a). The term "employee" now includes officers and independent contractors who function as officers or employees. Cal. Gov't Code § 54957.6(b). Section 54957.6 expressly bars "discussions of a local agency's available funds, funding priorities, or budget."

c. To Discuss "Pending Litigation" With The Agency's Attorney

(1) In General

Closed sessions are permitted to confer with, or to receive advice from, legal counsel regarding pending litigation when discussion in open session would prejudice the agency's position in the litigation. Cal. Gov't Code § 54956.9. Whether to settle a lawsuit is a permissible subject. 75 Cal. Op. Att'y Gen. 14 (1992).

(2) What Constitutes "Pending Litigation"

Litigation includes court actions (including eminent domain proceedings regardless of section 54956.8) and adjudicatory proceedings before an administrative agency, hearing officer or arbitrator. Litigation is deemed pending in four situations:

- Litigation has been *formally initiated*; Cal. Gov't Code § 54956.9(a).

- There is *significant exposure* to litigation in the opinion of the legislative body on the advice of legal counsel, based upon "existing facts and circumstances;" Cal. Gov't Code § 54956.9(b)(1).

- Based on "existing facts and circumstances," the legislative body is meeting *only* to decide whether there is significant exposure to litigation which would authorize a closed session under section 54956.9(b)(1); Cal. Gov't Code § 54956.9(b)(2).

- The legislative body has decided, or is deciding whether, to initiate litigation. Cal. Gov't Code § 54956.9(c).

(3) What Constitutes "Existing Facts And Circumstances"

The 1993 amendments included a definition of the key phrase "existing facts and circumstances." Cal. Gov't Code § 54956.9(b)(2)(A)-(E). The definitions interweave procedural requirements that call for factual announcements, document disclosure, or creation of records which, essentially, document the facts and circumstances constituting the threat of litigation. However, the section specifically protects from disclosure any written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act. See Cal. Gov't Code § 54956.9(b)(2)(F).

There are now five *exclusive* situations which can justify an opinion that there is significant exposure to litigation. For the purposes of these situations, significant exposure to officers or employees of the agency, whether or not arising from within the course and scope of office or employment, is deemed significant exposure for the agency. The five situations are:

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

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

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

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

- A statement threatening litigation made by a person outside an open and public meeting made on a specific matter within the responsibility of the local agency so long as the official or employee of the legislative body 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.

(4) Procedure

For a discussion of pre-litigation closed session announcements, see section I.B.2.b.(3) (pages 29 to 30) of this practice guide.

(5) Closed Sessions Prohibited Except As "Expressly Authorized"

To be lawful, a closed session must be expressly authorized by a specific statute. See Cal. Gov't Code § 54962. See also Cal. Gov't Code § 54956.9 (no implied attorney-client privilege basis for closed sessions).

Practice Tip: The 1993 amendments eliminated the requirement for a written attorney memorandum justifying the pending litigation closed session. However, city attorneys may wish to continue the practice in order to document their reasoning and justification for closed sessions, and in order to create a contemporaneous, permanent record of the legislative body's voting tally. In the alternative, confidential minutes may be kept by someone other than the city attorney pursuant to section 54957.2.

d. To Consider The "Appointment, Employment, Evaluation Of Performance, Or Dismissal Of A Public Employee"

(1) In General

Closed sessions are permitted to consider the appointment, employment, evaluation of performance, or dismissal of a public employee, or to hear complaints or charges brought against the employee. Cal. Gov't Code § 54967. This is sometimes referred to as the "personnel exception."

(2) Appointed Officials And Others

The "employees" covered do not include elected officials or members of the legislative body. Before the 1993 amendments independent contractors other than city attorneys were not covered. See Rowen v. Santa Clara Unified School District, 121 Cal. App. 3d 231, 175 Cal. Rptr. 292 (1981); Lucas v. Board of Trustees, 18 Cal. App. 3d 988, 96 Cal. Rptr. 431 (1971); Cozzolino v. City of Fontana, 136 Cal. App. 2d 608, 186 Cal. Rptr. 615 (1955); 59 Cal. Op. Att'y Gen. 532 (1976). Independent contractors are now covered provided they are functioning as officers or employees.

(3) Specific Employees

The personnel matters discussed must relate to specific individuals; broad-based reviews of salaries or classifications must be held in open session (unless instructions are being given to a labor negotiator under section 54957.6). See Santa Clara Federation of Teachers v. Governing Board, 116 Cal. App. 3d 831, 172 Cal. Rptr. 312 (1981); 61 Cal. Op. Att'y Gen. 153 (1978).

(4) Salary-Setting

Employee salaries cannot be established in closed session, even when done in connection with a permissible "evaluation of performance." See San Diego Union v. City Council, 146 Cal. App. 3d 947, 196 Cal. Rptr. 45 (1983). San Diego Union suggests a two-step process with a closed session determination of whether a salary change is warranted, followed by an open session establishment of actual compensation. San Diego Union recognizes that "oblique references" to salary in closed session are permissible.

Two 1993 amendments bear on this issue. Section 54957 now expressly bars "discussions of a local agency's available funds, funding priorities, or budget", language which closely mimics San Diego Union. See San Diego Union, supra, 146 Cal. App. 3d at 956, 196 Cal. Rptr. at 49. It is difficult to see how salaries can be discussed or established, and in particular increased, without considering "available funds", etc. Section 54957.1, on the other hand, now requires a public report of any "change in compensation" approved in closed session.

Caveat: Section 54957.1 is *not* an authorization to set salaries in closed session. It is perhaps a reference to the possibility of disciplinary salary reductions which might occur during a section 54957 closed session.

Practice Tip: After San Diego Union, section 54957.6 was amended to permit closed sessions with labor negotiators to consider unrepresented employees. Senior management salaries can therefore be negotiated with the legislative body's authorized negotiator, who may receive direction as to salary authorization in closed session.

(5) Complaints Against Employees

Complaints against employees may be heard in closed session, unless the employee requests a public hearing. The 1993 amendments added the requirement that the employee be given 24 hours written notice of his or her right to a public hearing of the charges. Failure to give this notice renders any closed session disciplinary action "null and void."

e. To Consider License Applications By Persons With Criminal Records

Closed sessions are permitted to consider license applications by persons with criminal records. See Cal. Gov't Code § 54956.7.

f. Meetings With Law Enforcement Regarding Public Security

A local agency may meet in closed session to confer with law enforcement officials on matters relating to public security. See Cal. Gov't Code § 54957.

5. Minute Book

The city council may, by ordinance or resolution, require a clerk or other employee to attend each closed session and keep a record of topics discussed and decisions made at the meeting. A minute book or other record is not a public record but is available to a court if a Brown Act violation is alleged. Cal. Gov't Code § 54957.2.

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F.
Violations and Remedies

by Thomas R. Curry, City Attorney, Livermore

1. Criminal Penalties

a. In General

A member of a legislative body who attends a meeting which is held in violation of the Brown Act is guilty of a misdemeanor. Cal. Gov't Code § 54959.

b. Change in Standard For Criminal Liability

Criminal prosecutions under the Brown Act have been very rare. According to several critics, one reason for this lack of prosecutorial fervor was the standard for proving a violation was too difficult to meet. Under the former law, a conviction could only be obtained if the defendant had knowledge that the meeting was held in violation of the act.

The new law attempts to address this problem by changing the standard to one of "wrongful intent to deprive the public of information to which it is entitled under this chapter." See Cal. Gov't Code § 54959. Although the purpose of the change is to ease the prosecutor's burden, it is not at all clear that this purpose has been achieved. Because the changes to the Brown Act have resulted in a proliferation of seminars and other training sessions for officials on the Brown Act, it may have been easier to prove "knowledge of the violation" under the old standard than "wrongful intent to deprive" under the new standard.

c. Remaining Requirements

Not changed by the new law are the requirements:

- Violations constitute a misdemeanor
- Criminal penalties apply only to members of the legislative body, not to either members of the staff or the public

- Action must have been taken at the allegedly unlawful meeting

See Cal. Gov't Code § 54959.

2. Civil Relief: Preventive and Declaratory

a. Standing

Section 54960 authorizes civil actions (by mandamus, injunction or declaratory relief) to prevent violations of and to determine the applicability of the act. The former law limited standing to "any interested person"--a very broad category.

The new law adds the district attorney to those who may bring such an action. See Cal. Gov't Code § 54960(a). Unless one assumes district attorneys were not "interested persons" under the old law, it is difficult to discern what this change has accomplished.

b. Expressive Rights of Council Members

Existing law authorizes legal action for the purpose of ". . . 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 actions of the legislative body." The new law includes within the scope of this relief the determination of the ". . . validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members . . ." Cal. Gov't Code § 54960.

According to the California First Amendment Coalition, the purpose of this change is to permit the court to determine if "gag rules" or other penalties adopted by city councils to preserve confidentially violate the free speech rights of any council member. It could be argued that the additional language was not needed because declaratory relief, etc. was already available to challenge such rules. It could also be argued that the proponents of the new language may be more concerned with increasing their access to the statements of council members than with the free expression rights of those council members.

Regardless of that, the new language could cause considerable grief depending on how broadly the courts will interpret the free speech rights of council members. The new language does not prohibit gag rules per se. It authorizes a judicial determination of whether specific rules violate the right of free expression as guaranteed under state or federal law.

As with other free expression analyses, the courts will most likely attempt to balance the public's interest in maintaining the secrecy of the information against the public's interest in receiving and the council members' right to send the information. By specifically authorizing confidentially, the state legislature has clearly determined where the public interest lies.

It would be unfortunate if this new language, through judicial interpretation, results in a consideration of council member free speech rights to the exclusion of other legitimate issues, e.g., who is the holder of the attorney-client privilege, how this privilege can be waived, the potential liability of the city, should a council member publicly discuss closed session matters to the jeopardy of the privacy or liberty interests of an employee or license applicant.

Practice Tip: In order to comply with the new language in section 54960, local restrictions on closed session disclosures should be narrowly drawn to mirror the closed session provisions found in the Brown Act. City attorneys may also wish to review a December 1993 Attorney General opinion which reportedly addresses related issues.

c. Taping

One of the most significant change to section 54960 is the new language dealing with the taping of closed sessions. As originally proposed, the new law would have required videotaping of all closed sessions. The act now permits a lawsuit to " . . . compel the legislative body to tape record its closed sessions as hereinafter provided." Cal. Gov't Code § 54960(a).

Under section 54960(b), such taping can be ordered by a court if it finds a violation of those provisions of the act dealing with all the statutorily-authorized closed sessions:

- License applications, Cal. Gov't Code § 54956.7
- Real property transactions, Cal. Gov't Code § 54956.8
- Pending litigation, Cal. Gov't Code § 54956.9
- Insurance pooling, Cal. Gov't Code § 54956.95
- Personnel matters, Cal. Gov't Code § 54957
- Labor negotiations, Cal. Gov't Code § 54957.6

If taping is ordered by the court, the tape recording must be labeled with the date of the closed session and the title of its custodian. Cal. Gov't Code § 54960(c)(1).

Section 54960(c)(2) describes the procedures to be followed for discovery of the tapes. These include the filing of a written notice with the appropriate court with a copy of the notice to the governmental agency. Cal. Gov't Code § 54960(c)(2)(A).

The notice must include identification of the proceedings with the date and time of the meetings recorded and the governmental agency which has custody. Cal. Gov't Code § 54960(c)(2)(B)(i). The party seeking discovery must also file an affidavit which contains facts indicating the violation has occurred in closed session. Cal. Gov't Code § 54960(c)(2)(B)(ii).

If the court determines that good cause exists, it will conduct an in camera review and can order the disclosure of the recording if such disclosure ". . . would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, . . ." Cal. Gov't Code § 54960(c)(3) and (4). The attorney/client privilege, however, remains intact and disclosure does not apply to these communications. Cal. Gov't Code § 54960(c)(5).

3. Invalidation

Before 1987, there were no statutory provisions dealing with the validity of action taken in violation of the Brown Act. Indeed the court decisions were uniform in finding that invalidation was not an authorized remedy under the act. In 1987, however, section 54960.1 was added to permit invalidation of unlawful action under specified procedures, unless the action is cured in a timely manner by the legislative body.

A suit seeking invalidation can be brought by "any interested person" and the district attorney. Cal. Gov't Code § 54960.1(a). Invalidation actions apply to violations of the open meeting (section 54953); agenda posting (section 54954.2); closed session descriptions (section 54954.5); notice and hearing on new taxes and assessments (section 54954.6); and special meeting requirements (section 54956). Cal. Gov't Code § 54960.1(a).

Before a suit can be brought seeking invalidation, a written demand describing the challenged action and violation must be made on the legislative body to cure the violation. Cal. Gov't Code § 54960.1(b). If the action was taken in open session, the written demand must be made within 30 days of the date the action was taken. Cal. Gov't Code § 54960.1(b).

If the action was taken in closed session, the new law has extended to 90 days the time in which the demand must be made. Cal. Gov't Code § 54960.1(b). The suit to invalidate must be brought within 15 days of the receipt of the legislative body's decision to cure or within 15 days of the expiration of the 30-day period in which the legislative body has to cure. Cal. Gov't Code § 54960.1(b).

Invalidation does not apply to situations involving:

- Substantial compliance
- Action taken in connection with the sale or issuance of notes, etc.
- Certain contractual obligations if another party has detrimentally relied, but not including salary or fees for professional services.
- Tax collection
- A person challenging notice when that person had actual notice of the item of business to be discussed at least 72 hours before regular meeting, 24 hours before a special meeting or prior to an emergency meeting.

Cal. Gov't Code § 54960.1(c).

If the court determines that the violation has been cured by the legislative body it can dismiss with prejudice the action seeking invalidation. Cal. Gov't Code § 54960.1(d).

4. Costs and Attorney's Fees

Provisions relating to costs and attorneys have not been changed by the new legislation. Under Government Code section 54960.5, they are available to the prevailing plaintiff. A prevailing defendant can be awarded costs and attorney's fees only if the court finds that the action was clearly frivolous and totally lacking in merit. Cal. Gov't Code § 54960.5.

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II.

The Public Records Act: Selected Issues

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A.
Police Records and The Public Records Act

by Everett Jenkins, Assistant City Attorney, Richmond

1. General Principles

Before delving into the key issue pertaining to the disclosure of police officer personnel records, it seems advisable to briefly restate some general principles concerning the disclosure of any public record. First of all, it is important to remember that all records of a public entity, including those maintained by a police department, are required to be open for public inspection and copying unless the records are exempted by specific provisions of the California Public Records Act. See Cal. Gov't Code §§ 6250 et seq. (especially sections 6252 and 6253).

Secondly, when a document contains items of information that should be released along with items of information which should not be released, the city or public entity should edit the document, when and where feasible, to allow for the release of those items of information which may be released. See Northern California Police Practices Project v. Craig, 90 Cal. App. 3d 116, 124 (1979); Central Valley Chapter v. Younger, 95 Cal. App. 3d 212, 239 (1979). (The editing of a document so as to essentially black out the non-disclosable (confidential) information is commonly referred to as "redacting" the document.)

A third principle to remember is that a reporter whether from a newspaper, radio station, or television station is just a citizen. As such, a reporter has no more of a right to access public records than does the general public. Indeed, for all intents and purposes of compliance with the Public Records Act, the press and the general public should be given equal access to public records and public record information. See Pell v. Procunier, 417 U.S. 817 (1974).

Practice Tip: Certain "courtesies" are sometimes extended to the press. However, "courtesies" between "professionals" have not yet evolved into fundamental rights to be unilaterally exercised by the press. Also a "courtesy" provided to the press may create an obligation of providing similar courtesies to the public at-large. Thus, it would seem to be prudent to be careful as to the circumstances under which courtesies are regularly provided to the press but not to the public.

The fourth basic principle pertaining to the disclosure of public records is that a public entity may withhold certain records from disclosure when "on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record." See Cal. Gov't Code § 6255; Times Mirror Co. v. Superior Court, 53 Cal. 3d 1325, 283 Cal. Rptr. 893 (1991).

2. Police Officer Personnel Record Information

The most common involvement of city attorneys with police records occurs in responding to requests for the disclosure of police officer personnel records. This involvement has increased in recent years because of the uncertainty created by divergent appellate cases on the issue of disclosure of police officer personnel records under the Public Records Act.

a. Analysis

(1) Public Records Act Provisions

Generally, under the Public Records Act, personnel, medical, or such similar records are exempt from disclosure if such disclosure would constitute an unwarranted invasion of personal privacy. See Cal. Gov't Code § 6254(c). Thus, given a literal interpretation, the Public Records Act would appear to require that a public entity justify withholding an employee's personnel or medical records by asserting (and eventually demonstrating to a judge) that the disclosure of said employee's records would constitute an unwarranted invasion of privacy. Under such a standard, a police officer's personnel records would need to be of a "personal" nature in order to avoid being subject to disclosure. See Black Panther Party v. Kehoe, 42 Cal. App. 3d 645, 117 Cal. Rptr. 106 (1974).

(2) Evidence and Penal Code Provisions

However, in stark contrast to the standard in the Public Records Act which imposes a burden upon the public entity to justify withholding a police officer's personnel records, there stands certain provisions of the California Penal and Evidence Codes. Pursuant to Penal Code sections 832.5, 832.7 and 832.8, police officer personnel records are deemed to be confidential and may not be disclosed without the initiation of a court proceeding (Pitchess motion[1]) pursuant to Evidence Code sections 1043 and 1045.

[1] See Pitchess v. Superior Court, 11 Cal. 3d 531, 113 Cal. Rptr. 897 (1974).

(3) Reconciling the Conflicts

The confidentiality created by these express statutory provisions would appear to supersede the provisions of Government Code section 6254(c). Indeed, when read in conjunction with Government Code section 6254(k), it would appear to be clear that police officer personnel records are exempt from disclosure under the Public Records Act[2]. However, appearances can be deceiving in some cases and in some courts.

(a) The Bradshaw Decision

In Bradshaw v. City of Los Angeles, 221 Cal. App. 3d 908, 270 Cal. Rptr. 711 (1990), the court held the confidentiality provisions of Penal Code section 832.7 only applied to discovery in the context of criminal or civil litigation. In Bradshaw, an internal affairs investigation was conducted after plaintiff (a Los Angeles police officer) forced two other uniformed law enforcement officers to lie face down on the pavement until their identities were verified. The plaintiff police officer did this because the officers were seen sitting in an unmarked vehicle and because there were rumors that someone was impersonating Los Angeles police officers.

However, rumors are not facts and do not amount to probable cause. Naturally, the plaintiff police officer's superiors were not amused by the plaintiff's unprofessional actions. Disciplinary proceedings were initiated.

After a police department disciplinary hearing which was open to the public and to the press (but which the press did not attend), the plaintiff police officer was suspended. Thereafter, the Los Angeles police chief gave the news media portions of the hearing transcripts and other information gathered from the internal affairs investigation. (It is alleged that this was done by the police chief in an attempt to publicly humiliate the plaintiff police officer.)

The plaintiff police officer took exception to the release of this information and subsequently sued the city. In the suit, the plaintiff alleged that his right to confidentiality under Penal Code section 832.7 had been violated.

The Bradshaw court rendered a ruling in favor of the city. In the Bradshaw ruling, the court traced the history of Penal Code sections 832.5, 832.7 and 832.8 and Evidence Code sections 1043 and 1045. The court found that these pieces of legislation were

[2] Government Code section 6254(k) exempts from disclosure records "the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege."

adopted to codify the doctrine established by Pitchess v. Superior Court, 11 Cal. 3d 531, 113 Cal. Rptr. 897 (1974) and "established procedures to obtain personnel records despite an agency's decision to invoke Evidence Code section 1040 . . ." Bradshaw v. City of Los Angeles, 221 Cal. App. 3d at 918 (1990).

Of particular importance, the court also found that Penal Code section 832.7, by its own language, limits its confidentiality privilege to criminal or civil proceedings not to administrative proceedings and, by extrapolation, not to public records requests. Thus, under Bradshaw, it could be (and has been) argued, if a public records request has been made, then police personnel records may only be withheld when the public entity can demonstrate that the release of said records constitutes an unwarranted invasion of privacy or when the public entity can demonstrate that the public interest is best served by withholding the documents.

The Bradshaw case was a serious setback to the concept of the confidentiality of police officer personnel records and the confidentiality of records of complaints made against police officers. The sweeping scope of the opinion seemed to undermine the confidentiality concept to the point where many commentators began to perceive the concept as being nothing more than a myth.

(b) The Williams and Los Angeles County Decisions

In 1993, two cases were decided which appear to restore some of the confidentiality previously afforded to police officer personnel records.

In the first case, Williams v. Superior Court, 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882 (1993), the California Supreme Court held a public entity's investigatory records for disciplinary proceedings against police officers are exempt from disclosure pursuant to Government Code section 6254(f) and remain exempt from disclosure even after the investigation has ended. The court held that once an investigation has come into being because there is a concrete and definite prospect of enforcement proceedings against police officers, then the public entity need not disclose the investigatory information it has obtained and maintained.

This ruling essentially makes many of the more serious internal affairs investigations exempt from disclosure since it is generally the internal affairs investigations which are a precursor to disciplinary proceedings. Additionally, using the same rationale, investigations pertaining to many of the most serious citizen complaints would also be exempt.

However, while exempting some of the investigatory information maintained in police officer personnel records, the Williams case falls short of exempting police officer personnel records to the extent perceived before Bradshaw. Something more would be needed to restore the pre-Bradshaw confidentiality concept.

In the case of County of Los Angeles v. Superior Court (Kusar), 18 Cal. App. 4th 588, 22 Cal. Rptr. 2d 409 (1993), the court ruled that the trial court erred in ordering the county to generate and disclose, pursuant to Government Code section 6254(f), certain recorded information regarding every person arrested for certain offenses by two specifically named deputy sheriffs over a ten-year period. The case arose when a legal secretary initiated legal proceedings to obtain information previously denied a client by an adverse discovery ruling in a separate civil action arising from the alleged use of excessive force by law enforcement officers.

The court held that the provisions of the Public Records Act authorize disclosure only of contemporaneous information relating to persons currently within the criminal justice system, pursuant to a legislative intent to continue the common law tradition of contemporaneous disclosure of individualized arrest information in order to prevent secret arrests and to mandate the continued disclosure of customary and basic law enforcement information to the press.

This ruling is important because it appears to also be applicable to records of complaints such as citizen complaints against police officers. Thus, under County of Los Angeles, records of citizen complaints would appear to be exempt from disclosure under the Public Records Act unless the citizen complaints are of a "contemporaneous" nature.

Of particular interest in the text of the court's decision is the court's discussion of Penal Code sections 832.5, 832.7 and 832.8 and Evidence Code sections 1043 and 1045 and their relation to the Public Records Act. The court said:

> These statutes (Penal Code §§ 832.5, 832.7 and 832.8 and Evidence Code §§ 1043 and 1045) set forth detailed and careful procedures to assure that the sensitive information contained in records relating to allegations of police misconduct will be disclosed only upon a showing of manifest necessity. Such procedures would be nullified if, . . ., the same information, or information leading to it, could be obtained as a matter of right through the Public Records Act. Obviously, we cannot construe section 6254, subdivision (f), to require such a result.

County of Los Angeles, 18 Cal. App. 4th at 600, 22 Cal. Rptr. 2d at 417 (1993). (parenthetical phrase and emphasis added.)

The court then concluded by saying:

> Based on the legislative purpose and intent which we glean from the legislative history, we conclude that the records to be disclosed under section 6254, subdivision (f) (1) and (2), are limited to current information and records of the matters described in the statute which pertain to contemporaneous police activity.

Id. at 18 Cal. App. 4th 601, 22 Cal. Rptr. 2d at 418.

Unfortunately, absent from the court's decision is any mention of the Bradshaw case. While the County of Los Angeles decision does appear to restore a public entity's ability to withhold some of the information deemed confidential by Penal Code section 832.7, it is not as clear (nor as broad) as it would need to be to restore the pre-Bradshaw concept of confidentiality.

b. Practice Tips

What then should be done if a public records request is made asking for police officer personnel records or records pertaining to citizen complaints by police officers?

After reading the above cases and examining the case histories, the most persuasive arguments, and the most sound reasoning, appears to be those set forth in the County of Los Angeles case. However, the County of Los Angeles case is limited in its scope and fails to reconcile its ruling with the Bradshaw case.

Nevertheless, given the legitimate concern police officers have concerning the release of their personnel records; given the need to protect the integrity of the internal affairs investigatory process regarding disciplinary matters and citizen complaints; and given the rather express intent of the legislature in enacting Penal Code sections 832.5, 832.7, and 832.8 along with Evidence Code sections 1043 and 1045, a compelling argument can be made that a public entity is obligated to withhold disclosure of police officer personnel records and records of citizen complaints.

If a public entity chooses to withhold police officer personnel records from disclosure, a variety of arguments may be employed:

- The records may be withheld because the public interest is best served by withholding the records. See Cal. Gov't Code § 6255.

- The records may be withheld because the disclosure would constitute an unwarranted invasion of the police officer's privacy. See Cal. Gov't Code § 6254(c).

- The records may be withheld because they are made confidential by Penal Code section 832.7 and are made exempt from disclosure by Government Code section 6254(k).

- The records may be withheld because they pertain to an investigation which may become a part of a disciplinary proceeding. See Williams v. Superior Court, 5 Cal. 4th 337, 19 Cal. Rptr. 2d 882 (1993).

- The records may be withheld because they do not pertain to contemporaneous police activity. See County of Los Angeles v. Superior Court (Kusar), 18 Cal. App. 4th 588, 22 Cal. Rptr. 409 (1993).

3. 911 Tapes

In recent years, it has become an all too common custom to see replays of 911 tapes on television news programs. 911 tapes are recordings of the emergency telephone conversations received by police dispatchers. These tapes are obviously of interest to the news media because of the dramatic and emotional impact the tapes can have. However, questions arise as to when should these tapes be disclosed and as to whether these tapes must be disclosed.

a. Analysis

911 tapes are essentially records of either complaints or requests for assistance. Complaint and request for assistance information, as a whole, is exempt from disclosure. See Cal. Gov't Code § 6254(f). However, certain information contained in the complaint and request for assistance information should be released. See Cal. Gov't Code § 6254(f)(2).

Generally, the following information should be released upon receipt of an incident specific record request, see County of Los Angeles v. Superior Court, 18 Cal. App. 4th 588 (1993):

- The time, substance, and location of the complaint or request for assistance;

- The time and nature of the police department's response;

- The time, date and location of the crime or incident which caused the complaint or request for assistance to be made;

- The name, age and current address of the victim EXCEPT THAT

  - The address of the victim of certain crimes (e.g., rape) should not be disclosed; and

  - The name of the victim of certain crimes (e.g., rape) should not be disclosed if the victim requests that it not be disclosed or if the victim's parent or guardian requests that it not be disclosed.

- The factual circumstances surrounding the crime or incident; and

- A general description of any injuries, property, or weapons involved.

Technically, the above information is all that needs to be provided off a 911 tape. There does not appear to be any requirement that the police department release the tape itself. However, while there is no requirement that the police department release the tape there is no general prohibition against either. Thus, a police department may, of its own volition, choose to release such recordings.

b. Practice Tips

If a public entity decides to disclose a 911 tape or any other request for assistance information, there are some caveats. On a case by case basis, the public entity should be advised not to disclose a 911 tape if disclosure would:

- Disclose the identity of a minor suspect or a confidential informant;

- Endanger the safety of a witness or other persons involved in the investigation of the crime or incident;

- Endanger the successful completion of the investigation or the crime or incident or the successful completion of a related investigation;

- Constitute an unwarranted invasion of personal privacy; or

- Deprive a suspect of a fair trial.

4. Victim Information

a. Analysis

A public entity needs to be sensitive to the privacy needs of victims of crimes. As such, care should be given to the disclosure of victim information.

Government Code section 6254(f) governs the disclosure of victim information. With regard to specific victim information, section 6254(f) requires that the name, age and current address of the victim be provided EXCEPT THAT

- The address of the victim of certain crimes (e.g., rape, child abuse, sodomy, etc.) should not be disclosed; and

- The name of the victim of certain crimes (e.g., rape, child abuse, sodomy, etc.) should not be disclosed if the victim requests that it not be disclosed or if the victim's parent or guardian requests that it not be disclosed.

In addition to these general statutory exceptions, there is a special statutory exception which is applicable when a person is the victim of more than one crime during a single incident. When a person is a victim of more than one crime (e.g., assault, battery and rape), information disclosing that the person is a victim of one of the specified "invasion of privacy and person" crimes (e.g., rape) may be deleted at the request of the victim, or the victim's parent or guardian, in making the report of the crime available to the public.

b. Practice Tips

While not set forth in the statutes, another consideration involved in disclosing information concerning a victim should be whether the release of certain information would constitute an unwarranted invasion of the victim's privacy. In some cases, the identity of a victim may be publicly known but the details of the crime might not. In situations when the privacy of the victim would be invaded and the victim further victimized, it would appear that an argument could and should be made that the public interest in withholding certain crime information outweighs the public interest in disclosure.

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B.
Personal or Proprietary Information

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1. Salary Records of Individual Government Employees

This section addresses whether and under what circumstances the payroll records or salary records of individual government employees are subject to mandatory disclosure under the Public Records Act. Requests for records which merely reflect the general salary ranges by employment classifications of government employees are disclosable under the Public Records Act and are not discussed.

a. Analysis

(1) General California Law

As the custodian of public records containing personal information about its employees, public employers in California have two conflicting, but equally compelling mandates. Under article I, section 1, of the California Constitution, people have a fundamental right to privacy in business and government files containing personal information about them. White v. Davis, 13 Cal. 3d 757, 774, 120 Cal. Rptr. 533, ___ (1975).

As an employer, cities cannot waive the privacy rights of its employees, but have a duty to protect personal information in their records and to prevent the improper use of personal information about their employees. Porten v. University of San Francisco, 64 Cal. App. 3d 825, 832, 134 Cal. Rptr. 825, ___ (1st Dist. 1976); Payton v. City of Santa Clara, 132 Cal. App. 3d 152, 154-155, 183 Cal. Rptr. 17, ___ (1st Dist. 1982); Board of Trustees v. Superior Court, 119 Cal. App. 3d 516, 524-526, 174 Cal. Rptr. 160, ___ (1st Dist. 1981).

Under the California Public Records Act, Cal. Gov't Code §§ 6250 et seq., however, the public has a broad and fundamental right of access to records documenting the activities of public officials. "The people's right to know" is based on the societal concern of preventing secrecy in government. AFSME v. Regents of University of California, 80 Cal. App. 3d 913, 917, 146 Cal. Rptr. 42, ___ (1st Dist. 1978). Therefore, as a government and in the interest of disclosing information demanded by a democratic process, cities must make its public records open to public inspection.

(2) Federal Freedom of Information Act Interpretations

The California Public Records Act was modeled on the Federal Freedom Of Information Act (FOIA), 5 U.S.C. §§ 552 et seq. (1966), and the FOIA and its amendments may be used to construe the Public Records Act. American Civil Liberties Union Foundation v. Deukmejian, 32 Cal. 3d 440, 447, 186 Cal. Rptr. 235, ___ (1982). Like the Public Records Act, the FOIA was designed to serve the public's interest to know while protecting the individual's personal privacy. Thus, the FOIA establishes a general policy of full disclosure unless the information requested is clearly exempted. Department of Air Force v. Rose, 425 U.S. 352, 461, 96 S. Ct. 1592, ___, 48 L. Ed. 2d 11, ___ (1976).

Exemption 6 of 5 U.S.C. section 552(b) excludes from the FOIA "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The purpose of Exemption 6 is to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information. United States Department of State v. Washington Post Co., 456 U.S. 595, 599, 102 S. Ct. 1957, ___, 72 L. Ed. 2d 358, ___ (1982).

Under the FOIA, the term, "similar files," includes all files which contain information about a particular individual. Washington Post Co., 456 U.S. at 600. If the files fall within this definition, the remaining issue is whether disclosure would constitute a clearly unwarranted invasion of personal privacy. This determination requires a balancing of interests "between the protection of an individual's private affairs from unnecessary public scrutiny and the preservation of the public's right to government information by exclud[ing] those kinds of files the disclosure of which might harm the individual." Id. at 599.

Under the federal caselaw interpreting the FOIA, specific salary information of individual governmental employees is personal information requiring a balancing act before disclosure will be permitted. Federal courts have enforced requests for financial disclosure regarding individual federal employees when the information sought has a logical nexus to the duties of the employee.

When federal employees and officials are in a position to effect public policy, the courts have not hesitated to find that the state's interest in avoiding graft and corruption outweighs the employee's privacy interest in the family's financial affairs. Thus, extensive financial disclosures have been upheld for such public officials as legislators, Plante v. Gonzalez, 575 F.2d 1119 (5th Cir. 1978), reh'g denied, 580 F.2d 1052, cert. denied, sub nom Thomas v. Gonzalez, 439 U.S. 1129, 99 S. Ct. 1047, 59 L. Ed. 2d. 90 (1979), federal judges, DuPlantier v. U.S., 606 F.2d 654 (5th Cir. 1979), reh'g. denied, 608 F.2d 1373 (5th Cir. 1979), cert. denied, 449 U.S. 1076, 101 S. Ct. 854, 66 L. Ed. 2d 798 (1981), and police officers, O'Brien v. DeGrazia, 544 F.2d 543 (1st Cir. 1976), cert. denied, 431 U.S. 914.

For other kinds of federal employees, the federal courts have held that there is no public interest in the individual careers of public servants unless those employees create a legitimate public interest in their careers by using their positions to become involved in illegal or corrupt activities. See, e.g., Columbia Packing Co. v. U.S. Dept. of Agriculture, 417 F. Supp. 651, 655 (D.C. Mass. 1976), affirmed, 563 F.2d 495, 499 (1st Cir. 1977). Even then, any "public interest" assertion under Exemption 6 is scrutinized carefully to ensure that release of the requested information will further a valid and legitimate public interest. Campbell v. United States Civil Service Commission, 539 F.2d 58, 61-62 (10th Cir. 1976), and cases cited therein.

Thus, in Columbia Packing Co. v. U.S. Dept. of Agriculture, the court refused to order the disclosure of earnings records of two former federal meat inspectors convicted of taking bribes. Although reasoning that the inspectors' privacy interest had been diminished by their involvement in certain illegal job-related activities which created a legitimate public interest in their careers, the court characterized the requested financial information as containing "intimate details" of a "highly personal nature," the type of information that was intended to be protected by Exemption 6 of the FOIA.

The court concluded that, under the facts present in the case, disclosure of "this personal financial information" was not related to and would not further the public interest in whether public servants carry out their duties in an efficient and law-abiding manner and therefore, the privacy interest in nondisclosure of the two employees' earnings records outweighed the public interest in disclosure. Columbia Packing Co. v. U.S. Dept. of Agriculture, 417 F. Supp. 651, 654-655 (D.C. Mass. 1976), affirmed, 563 F.2d 495, 499 (1st Cir. 1977). (The court did order disclosure of the two employees' job evaluations.)

Also, in Campbell v. United States Civil Service Commission, government employees brought an action under the FOIA to obtain access to a United States Civil Service Commission's report on personnel management. The lower court ordered some of the material sought by the petitioners disclosed, but found that the information in the report concerning employees' job classifications, duties and salary was personal information and exempted from disclosure.

The court of appeals concurred, stating that such matters as an individual's job classification and salary are personal and capable of causing embarrassment. The court further held that the disclosure of these personnel records would be a serious invasion of privacy and that no public interest would be advanced by their disclosure. Campbell v. United States Civil Service Commission, 539 F.2d 58, 62 (10th Cir. 1976).

There appears to be a split in the federal courts as to whether a union or trade association is entitled to disclosure of certified payroll records of identifiable construction workers working on federal constructions projects. The third circuit held that such records were disclosable based on the public interest in monitoring compliance with the Davis-Bacon Act and on what it characterized as "the not particularly compelling" privacy

interest in such information. IBEW Local 5. v. HUD, 852 F.2d 87, 92 (5th Cir. 1988). The Columbia District Circuit sharply disagreed. It held that workers have a substantial privacy interest in the personal information contained in certified payroll records which outweighs "the limited public interest in disclosure--namely, the possibility that the information would facilitate investigation of government efforts to enforce the Davis-Bacon and Copeland Acts." Under these circumstances, disclosure of the requested payroll records would result in a "clearly unwarranted invasion of personal privacy." Painting and Drywall Work Preservation Fund v. HUD, 936 F.2d 1300, 1303-1304 (D.C. Cir. 1991).

(3) Specific Applications of California Law

As mentioned above, the Public Records Act also was designed to serve the public's interest to know while protecting the individual's personal privacy.[3] Government Code section 6254(c) is California's counterpart to Exemption 6 of the FOIA. Government Code section 6254(c) provides: ". . . nothing in this chapter shall be construed to require disclosure of records that are: . . . (c) [p]ersonnel, medical or similar files, the disclosure of which constitute an unwarranted invasion of personal privacy."

California's Public Records Act contains an additional exemption that has no counterpart in the FOIA. Government Code section 6255 provides:

> The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

(emphasis added).

There is only one California decision, Braun v. City of Taft, 154 Cal. App. 3d 332, 201 Cal. Rptr. 654 (5th Dist. 1984), which has considered the issue of whether a public employee's earnings records must by disclosed under the Public Records Act and it ordered disclosure of an employee's salary in connection with allegations of official

[3] While the Public Records Act affirms the public's right to disclosure under Government Code section 6250, it also reflects a genuine legislative concern for the right to privacy which is a concern reflected throughout the Act. Government Code section 6254 of the Act contains fourteen subdivisions which describe exemptions from the general disclosure requirements. Government Code section 6255 specifies an additional basis for exemption. In large part, these exemptions are designed to protect the privacy of persons whose personal affairs and information are collected for governmental purposes and recorded in government files. AFSCME v. Regents of University of California, 80 Cal. App. 3d 913, 915-916, 146 Cal. Rptr. 42, ___ (1st Dist. 1978); Black Panther Party v. Kehoe, 42 Cal. App. 3d 645, 652-658, 117 Cal. Rptr. 105, ___ (3d Dist. 1974).

misconduct. In the Braun case, the city manager refused to confirm or deny whether a fire fighter had been appointed to the position of transit administrator pending public charges that the appointment was improper. The employee's salary card reflecting his appointment to transit administrator was later altered to conceal the appointment.

The trial court tentatively ruled the salary card should not be disclosed, but after hearing argument, the court changed its ruling and ordered disclosure of the salary card. The trial court thought the alteration of the salary card was relevant to the charge of official misconduct.

Upon appeal, the appellate court sustained the lower court's order even though it was critical of the trial court's disclosure of the entire front portion of an employee's salary card. It noted that the salary card contained the employee's address, birth date, social security number, job classification, salary, credit union number, and possibly his home telephone number, all of which the court characterized as "more personal in nature," creating a greater "chance of unwarranted invasion of privacy," and as not related to showing whether official misconduct had occurred.

However, since the court was "reluctant to reverse on the limited ground that some personal data was on the face of the salary card," it minimized the embarrassing nature of the personal data and ruled that under the circumstances presented to the lower court, the court was within its discretion in finding that the disclosure of the salary card would not constitute an unwarranted invasion of privacy.

The Braun decision is often cited as holding that salary information does not fall within the personnel record exception of Government Code section 6254 and therefore, all requests for salary information are subject to the mandatory disclosure requirements of the Act. This broad interpretation is due to the appellate court's confusing and problematic reference to Government Code section 6254.8[4] in connection with the disclosure of other records that was requested in this case which were letters of appointment and of rescission. The court also held that a salary classification is public information, citing to Government Code section 6254.8.

It is important to stress that the Braun court did not hold that payroll records reflecting specific salary information are part of an employment contract within the meaning of Government Code section 6254.8. Instead, the court treated the salary card as a

[4] Government Code section 6254.8 provides that "[e]very employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of section 6254 and 6255." However, public employment is held by statute and not by contract, and it is not clear what the Legislature intended to be mandatorily disclosed under Government Code section 6254.8. See, e.g., Summers v. City of Cathedral City, 225 Cal. App. 3d 1047, 1065, 275 Cal. Rptr. 594, ___ (1st Dist. 1990) (where the court held that a public employee could not, as a matter of law, allege an employment contract between himself and the city).

"personnel, medical, or similar file" under Government Code section 6254(c), balanced the privacy interest and public interest in disclosure, and held that under circumstances when the city manager had refused to admit or deny the fire fighter's appointment, disclosure of the salary card was in the public interest. Braun v. City of Taft, 154 Cal. App. 3d 332, 343-345, 201 Cal. Rptr. 654, ___ (5th Dist. 1984).

Finally, while the California Attorney General has zealously defended the privacy rights of nongovernmental employees to their earnings records under the Public Records Act, 64 Cal. Op. Att'y Gen. 575 (1981), the Attorney General has concluded that public employees have a substantially diminished right of privacy and has consistently regarded any request for the earnings records of individual public employees as subject to mandatory disclosure under the Public Records Act. 68 Cal. Op. Att'y Gen. 73 (1985). Based on these opinions, it is the existing policy of the State Controller's Office to disclose to the public, upon request, the name of any state employee, his or her pay range by employment classification, and the amount of his or her present salary.

b. Practice Tips

As a practical matter, when courts have ruled in favor of disclosing salary information of individual public employees, they have minimized the intimate and highly personal nature of the requested salary information as well as the embarrassment and harm that will result to the employee as a result of the disclosure. However, payroll records can provide a virtual biography of a public employee's personal, employment and financial status. Therefore, when litigating this issue, it is important to underscore constitutional or statutory recognition of an individual's right to privacy to any item appearing on his or her payroll records in order to emphasize the intimate and highly personal nature of the information being requested.

For example, public disclosure of a person's indebtedness has long been held to be a prima facie violation of a person's privacy. See, e.g., 33 A.L.R. 3d 154 and cases cited therein. Similarly, California enforces a rigorous policy against the gratuitous disclosure of an individual's financial condition to the public, pursuant to the California right to privacy. See, e.g., Burrows v. Superior Court, 13 Cal. 3d 238, 243, 118 Cal. Rptr. 166, ___ (1974); Valley Bank of Nevada v. Superior Court, 15 Cal. 3d 652, 658, 125 Cal. Rptr. 553, ___ (1975); and Doyle v. State Bar, 32 Cal. 3d 12, 19, 184 Cal. Rptr. 720, ___ (1986). The California Attorney General provides a very helpful survey of federal and state laws protecting the privacy of different kinds of financial information in 64 Cal. Op. Att'y Gen. 575 (1981).

Second, when disclosure of the requested financial information is related to and will further a valid public interest such as the interest in whether public servants carry out their duties in an efficient and law-abiding manner, only those portions which are relevant to the public purpose should be disclosed. When disclosure of certain personal

information on payroll records do not relate to the public interest, but instead will result in injury or embarrassment to the individual, those items should be deleted before disclosure is made. See, e.g., Braun v. City of Taft, 154 Cal. App. 3d 332, 344, 201 Cal. Rptr. 654, ___ (5th Dist. 1984).

Finally, when reviewing a request for disclosure of specific salary information of an individual public employee, be advised that a court will order disclosure when the request for financial disclosure regarding an individual public employee has a logical nexus to the duties of the employee such as:

- when the employee is in a position to effect public policy; or
- when the employee has created a legitimate public interest in his or her career by using his or her position to become involved in illegal or corrupt activities.

2. Council Access to Personnel Records

This section addresses whether and under what circumstances a city council member has the right to inspect employee personnel records. Disclosure of personnel records in response to a consumer records subpoena, Pitchess motion or employee written authorization is not discussed.

a. Analysis

As a general principle, employees' privacy rights to their personnel files are protected by the California Constitution and their privacy rights cannot be waived their employers. El Dorado Savings and Loan Ass'n v. Superior Court, 190 Cal. App. 3d 342, 345-346, 235 Cal. Rptr. 303, ___ (3d Dist. 1987); Board of Trustees of Leland Stanford Junior University v. Superior Court of Santa Clara County, 119 Cal. App. 3d 516, 524-526, 174 Cal. Rptr. 160, ___ (1st Dist. 1981).

Whether council members have a right of access per se to employee personnel files does not involve the Public Records Act, but depends upon whether the applicable charter or local law provides them with that authority. If the charter provides the council with the power to hire, fire and manage employees, it has the same right of access to employee personnel files in order to discharge these functions as any other manager. It also has the same obligations to protect the privacy of those personnel files and to limit the use of information in personnel files to its proper purpose.[5]

[5] Employers have the duty and obligation to maintain the confidentiality of personnel files and to resist any attempts at unauthorized access. Craig v. Municipal Court, 100 Cal. App. 3d 69, 77, 161 Cal. Rptr. (continued...)

For example, in Brown v. City of Berkeley, 57 Cal. App. 3d 223, 129 Cal. Rptr. 1 (1st Dist. 1976), the court struck down as invalid certain portions of an initiative ordinance which empowered a police review commission to intervene in individual disciplinary proceedings. The court held that these powers conflicted with the city's charter which placed the power to appoint, discipline, or remove employees in the city manager, to the exclusion of any interference by the city council, and required that the council and its members deal with the administrative service solely through the city manager. Id. at 233-234. Under this charter, a council member would not have a right of access per se to employee personnel files because the charter expressly prohibits the council from hiring, firing, disciplining and managing city employees.

When a council member does not have a right of access per se to employee personnel files under the charter or local law, the council member stands in the same shoes as a member of the public making a request for disclosure of a public employee's personnel records under the California Public Records Act. Disclosure of a personnel file falls under the "personnel record" exemption of Government Code section 6254(c) and disclosure is required if

- the information sought is not sufficiently personal in nature to trigger the constitutional right of privacy,
- the information sought manifests the employment contract between the employee and the public employer, or
- when the information is sufficiently personal in nature, it will be disclosed if it relates to and will further a substantial public interest.

For example, in AFSME v. Regents of University of California, 80 Cal. App. 3d 913, 918, 146 Cal. Rptr. 42, ___ (1st Dist. 1978), the court held that records pertaining to well founded complaints of substantial wrongdoing by a government employee must be disclosed under the Public Records Act. Trivial or groundless complaints of wrongdoing by public officers and employees should not be disclosed, but if the charges are found to

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[5](...continued)
19, ___ (2d Dist. 1979). In addition, the employer is obliged to prevent improper use of personal information concerning employees. Divulging the information to the wrong person or for the wrong reason may result in liability. See Porten v. University of San Francisco, 64 Cal. App. 3d 825, 134 Cal. Rptr. 839 (1st Dist. 1976) (defendant university violated plaintiff's right to privacy when it sent a copy of his transcript to the State Scholarship Loan Commission without his authorization and contrary to its assurances of confidentiality); Payton v. City of Santa Clara, 132 Cal. App. 3d 152, 154-155, 183 Cal. Rptr. 17, ___ (1st Dist. 1982) (prima facie violation of right to privacy for termination of employment was improperly posted in common work area); (H & M Associates v. City of El Centro, 109 Cal. App. 3d 399, 411, 127 Cal. Rptr. 392 (4th Dist. 1980) (complaint stated cause of action where information obtained by employer for accounting purposes was divulged to lending institutions).

be true or if discipline is imposed (even if the sanction is only a private reproval), the public is entitled to information about the complaint, the discipline, and the information upon which it is based. Furthermore, "a proper reconciliation of the Act and the constitutional right of privacy mandates that, in situations such as that before us, the recorded complaint be of substantial nature before public access is permitted." Id.[6]

In the same vein is Board of Trustees of Leland Stanford Junior University v. Superior Court. Although decided under the Discovery Act, the court similarly weighed the individual privacy right to personnel files against the public interest in disclosure and ruled that the plaintiff was not entitled to discovery of a professor's personnel, tenure, and promotion files. Board of Trustees of Leland Stanford Junior University v. Superior Court of Santa Clara County, 119 Cal. App. 3d 516, 526, 174 Cal. Rptr. 160, ___ (1st Dist. 1981). See also El Dorado Savings and Loan Ass'n v. Superior Court, 190 Cal. App. 3d 342, 345-346, 235 Cal. Rptr. 303, ___ (3rd Dist. 1987), when the court held that confidential information in a personnel file is protected by the right of privacy found in the California Constitution and, on that basis, directed the lower court not to order disclosure under the Discovery Act of information in an individual's personnel file except to the extent that it was relevant in which its production was sought.

Compare these decisions with Eskaton Monterey Hospital v. Myers, 134 Cal. App. 3d 788, 184 Cal. Rptr. 840 (3rd Dist. 1982) which found that the personnel information requested under the Public Records Act was not sufficiently personal in nature to trigger the balance test. Three hospitals who had been audited with respect to their Medi-Cal program services made a request under the Public Records Act for disclosure of the auditor's professional qualifications from his personnel file with the Department of Health Services.

The appellate court upheld the lower court's order to disclose those portions of an auditor's personnel file which reflected the auditor's education, training, experience, awards, previous positions and publications. The court stated, "[s]uch information is routinely presented in both professional and social settings, is relatively innocuous and implicates no applicable privacy or public policy exemption." Id., at 794.

Finally, as discussed above, in Braun v. City of Taft, the court held that two letters in an employee's personnel file which appointed that employee to a certain position and then rescinded it were a public record since the letters manifested an employment contract

[6] See also the discussion of the FOIA cases under the salary information section of this paper where the federal courts will order disclosure of personal information about individual government employees when those employees create a legitimate public interest in their careers by using their positions to become involved in illegal or corrupt activities.

under Government Code section 6254.8. Braun v. City of Taft, 154 Cal. App. 3d 332, 332 201 Cal. Rptr. 654, ___ (5th Dist. 1984). Similarly, a salary classification is public information for the same reason.

b. Practice Tips

If a city charter provides a council with the power to hire, fire and manage the city's employees, a council member has authorized access to personnel files. In such a situation, the city can require the council member to abide by any rules or procedures established by the city to protect the confidentiality of personnel files. Furthermore, the council member should be advised to protect the confidentiality of the information and not to divulge the information for an improper purpose.

When the council members are not provided with such authority under the charter, their requests for access to personnel files must be screened under the Public Records Act in the same way that any request from the public would be screened. If the information sought is not particularly personal in nature, such as an employee's resume or curriculum vitae, that information should be disclosed.

If the requested information is already in a public file somewhere else, such as in the city clerk's office or in a salary resolution, disclose it. Often times, a simple confirmation of the requested information will suffice and will avoid the necessity to disclose portions of the employee's personnel file.

Bear in mind that the Braun disclosure order occurred as a direct result of the city manager's refusal to either confirm or deny whether an employee had been promoted. In this way, the Braun decision is similar to the AFSMCE decision which ordered disclosure of records pertaining to a well founded complaint of substantial wrongdoing by a public employee or official.

Finally, if one believes a personnel file or a portion of that file must be disclosed under the Public Records Act, provide the employee with sufficient advance notice that his or her personnel file will be disclosed. This will allow the employee to take whatever legal action the employee feels is necessary to protect his or her privacy rights and may protect the city from a privacy claim from the employee.

3. Licensee and Permittee Information

This section addresses whether and under what circumstances a city must disclose the names and home addresses of licensees and permittees under the Public Records Act.

a. Analysis

When a city refuses to disclose personal information obtained from citizens in the course of regulatory activities under the Public Records Act, the public agency bears the burden of proving that the release of this information constitutes an unwarranted invasion of privacy and disclosure serves no valid purpose. New York Times v. Superior Court, 218 Cal. App. 3d 1579, 268 Cal. Rtpr. 21 (2d Dist. 1990). When the purpose for the request is to verify official accountability and to check against the arbitrary exercise of official power and secrecy in the political process, two California courts have held that disclosure would not violate the individual right of privacy.

(1) Weapons Licenses

In CBS, Inc. v. Block, 42 Cal. 3d 646, 230 Cal. Rtpr. 362 (1986), the California Supreme Court held that any invasion of personal privacy caused by the public disclosure of records of licenses to carry concealed weapons and the applications for renewal of those licenses, was a minor and speculative consideration compared to the public purpose for which those records were sought. This purpose was to investigate possible abuses by officials in the exercise of their statutorily delegated discretion to issue licenses for concealed weapons.

The court stated that it was a privilege and not a right to carry a concealed weapon. The right of the public and the press to ensure that public officials are acting properly in issuing licenses for legitimate reasons is a clear and legislatively articulated justification for disclosure. CBS, Inc. v. Block, 42 Cal. 3d at 654.

(2) Water Usage

Similarly, in New York Times Co. v. Superior Court, a newspaper sought disclosure under the Public Records Act of the names and addresses of a water district's customers who exceeded their water allocation after implementation of a water rationing ordinance. Again, the court characterized the intrusion on individual privacy rights as minimal and speculative compared to the weighty public interest being asserted in favor of disclosure--disclosure of all who exceed their allocation will ensure that certain individuals do not receive special privileges from the water district, or alternatively, are not subject to discriminatory treatment.

Following the CBS, Inc. v. Block decision, the court concluded the district had failed to establish the narrow privacy rights invaded are so fundamental they outweigh the public's "fundamental and necessary right" to be informed concerning the workings of its government." New York Times v. Superior Court, 218 Cal. App. 3d 1579, 1586, 268 Cal. Rtpr. 21, ___ (2d Dist. 1990).

Both of these decisions acknowledged that disclosing the names and addresses of permittees, licensees and applicants intrudes on the individual right of privacy, but held that the intrusion is minimal in comparison with the weighty public interest being asserted in favor of disclosure. The reason for disclosure was directly related to the purpose of the Public Records Act--to maximize disclosure of the conduct of governmental operations in order to prevent corruption and hold public officials accountable. CBS, Inc. v. Block, 42 Cal. 3d 646, 651-652, 230 Cal. Rtpr. 362, ___ (1986).

(3) Commercial Users of Public Information

There is no reported California case in which the reason asserted for disclosure of such information is strictly commercial. However, there are such cases under the Freedom of Information Act (FOIA), 5 U.S.C. sections 552 et seq, and they have held that the privacy interests sufficiently outweigh any public interest at stake in disclosure.

In Minnis v. United States Dep't. of Agriculture, 737 F.2d 784 (9th Cir. 1984), a commercial lodge owner requested the Forest Service to disclose the names and addresses of all persons who applied for permits in 1983 to travel on a river on which his lodge was located so that he could mail advertisements to these persons. Approximately 9,370 people applied for permits during the 1983 regulated season. The court of appeals concluded that disclosure would violate the privacy exemption to FOIA, 5 U.S.C. section 552(b)(6). It held that disclosure would confer no discernible public benefit and would entail more than a minimal invasion of privacy.

In reaching this conclusion, the court reasoned that lists of names and addresses meet the definition in 5 U.S.C. section 552(b)(6) of a "personnel and medical files and similar files." It characterized the plaintiff's interest in obtaining the permit applicant list as purely commercial in character and unrelated to the public interest in checking against corruption and holding government accountable. Therefore, the plaintiff's interest did not weigh in favor of mandating disclosure of a name and address list. Minnis v. United States Dept. of Agriculture, 737 F.2d 784, 786-787 (9th Cir. 1984).

Furthermore, the court was unconvinced by plaintiff's argument that there was a public benefit in allowing outside scrutiny of the permit process because the information sought by plaintiff; i.e. applicant names and addresses, would not further that objective. Id. at 787. Also, the applicants' privacy interests were substantial. Not only would their names and addresses be disclosed, but also their personal interests, in particular, "their personal interests in water sports and the out-of-doors." Id.[7] Finally, the plaintiff had

[7] See also, Ruth Bader Ginsburg's concurrence in FLRA v. U.S. Dept. of Treasury, 884 F.2d 1446, 1459-1460 (CA DC 1989), in which she notes that in most "decisions that have found privacy interests in names and addresses sufficient to bar disclosure, the requested data would have conveyed further information of a more revealing and commercially valuable character."

alternative means of advertising his hotel to the public in furtherance of his commercial interest for which the information was sought. Id. at 788.

The Minnis decision under the FOIA may not be controlling in California under the Public Records Act for several reasons. In the CBS, Inc. decision, the court refused to allow L.A. County to rely on the specific exemption for nondisclosure in Government Code section 6254(c) for "personnel, medical or similar files" and held that the information relating to holders of concealed weapons permits, which included their names and addresses, was not in any way comparable to personnel or medical records. CBS, Inc. v. Block, 42 Cal. 3d 646, 655, fn. 14, 230 Cal. Rtpr. 362, ___ (1986).[8]

Instead, the court held that requests for disclosure of the names and home addresses of licensees and applicants must be determined under that portion of Government Code section 6255 which provides

> [t]he agency shall justify withholding any record by demonstrating ... that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Since Government Code section 6255 has no counterpart in the FOIA, California courts will not follow FOIA precedent. CBS, Inc. v. Block, 42 Cal. 3d 646, 661, 230 Cal. Rtpr. 362, ___ (1986).

Furthermore, the standard used in the Minnis decision--that the intrusion on individual privacy by releasing names and home addresses is more than minimal even when no stigma or embarrassment would result from disclosure, is a much less stringent standard then that used by California courts under the Public Records Act. Under Government Code section 6255, the California courts require that the privacy rights being invaded be "fundamental."[9]

On the other hand, California has yet to weigh the privacy interests of licensees and permitees in their names and home addresses against a commercial interest under the

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[8] The New York Times Co. v. Superior Court decision does not even mention Government Code section 6254(c).

[9] See, e.g., CBS, Inc. v. Block, 42 Cal. 3d 646, 654 230 Cal. Rptr. 362, ___ (1986), ". . . the information sought here would not inflict the kind of immediate social stigma that arises from having one's name included on a list of suspected members of organized crime." See also New York Times Co. v. Superior Court, 218 Cal. App. 3d 1579, 1585-1586, 268 Cal. Rptr. 21, ___ (2d Dist. 1990), holding that the concern whether disclosure could expose the individuals to verbal or physical harassment and encourage public embarrassment of them, was "speculative" and not so fundamental as to outweigh the public's "fundamental and necessary right" to be informed concerning the workings of its governments.

Public Records Act. Cities are required to refuse to disclose personal information contained in government files when such disclosure would constitute an unwarranted invasion of individual privacy under Article I, Section 1 of the California Constitution. American Civil Liberties Union Foundation v. Deukmejian, 32 Cal. 3d 440, 449-450, 186 Cal. Rptr. 235, ___ (1982). And, in enacting certain portions of the Public Records Act, the Legislature has stated that the personal privacy and security of one's home is fundamental to the constitutional right to privacy.[10]

It is possible that a California court would conclude that commercial interest should not weigh in favor of mandating disclosure of a name and address list.

b. Practice Tips

If a city releases the names and addresses of permittees or licensees in response to a request made for commercial reasons, the California decisions in CBS, Inc. v. Block and New York Times Co. v. Sullivan should protect the city from any individual claim of privacy under the California Constitution. On the other hand, if the city refuses to disclose the requested names and addresses, it can defend that decision based on the California constitutional right of privacy and FOIA decisional law which may or may not be regarded in state court as controlling.

4. Information on Successful Bidders on City Contracts

This section addresses the issues of the extent to which information is available on successful bidders for city contracts, and the ability of the public to access consultant records.

a. Analysis

While this is a controversial area, there is little California law on the subject, in that the Public Records Act does not distinguish information acquired through contractual or consulting relationships. Therefore, in addition to California law, this paper will also provide an limited analysis of the Freedom of Information Act provisions in these areas.

[10] See, e.g., Section 1 of Stats. 1989, c. 1213, in enacting Government Code section 6254.1 of the Public Records Act which protects the residential address of any person contained in the records of the Department of Housing and Community Development if the person has requested confidentiality of that information.

(1) The "Public" Nature of the Document

In evaluating a Public Records Act request, the threshold question is whether the document is a public record subject to disclosure. Government Code Section 6252(d) defines public records as:

> [A]ny writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics . . .

The Attorney General defines public records even more broadly, stating that:

> This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of recordkeeping instrument as it is developed. Only purely personal information unrelated to "the conduct of the public's business" could be considered exempt from this definition, i.e. the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activity.

58 Cal. Op. Att'y Gen. 629, 633-634 (1975).

These broad definitions would clearly encompass most information supplied by, or developed in the course of contracting with a successful bidder for a city contract or supplied by a consultant in performing work for a city.

(2) Disclosure Considerations

Assuming therefore, that the information requested meets this threshold test, the next question is whether there is a basis for denying access to the material. Government Code section 6254 enumerates the statutory exemptions to the disclosure requirement. Those most often cited as possible bases for denial of a request for information submitted by those doing business with the government are sections 6254(c), (k) and (n). These sections exempt disclosure of information that includes:

> (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
>
> (k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

> (n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

Exemptions (k) and (n) were discussed at length in San Gabriel Tribune v. Superior Court (City of West Covina), 143 Cal. App. 3d 762, 192 Cal. Rptr. 415 (2d Dist. 1983).

In that case, the San Gabriel Tribune filed a petition for writ of mandamus following the city's refusal to disclose financial statements used to evaluate a rate increase the City granted to its waste disposal contractor. The court concluded that the financial data that the city relied upon in granting the rate increase constituted a public record subject to public disclosure, in that the city had a contractual arrangement with the disposal company, and retained the power and duty to monitor the duties of waste collection delegated to the company.

In analyzing whether there was a statutory basis to deny the disclosure based on an exception contained in the Public Records Act, the court in San Gabriel looked first at subsection (k), particularly at the provisions of Evidence Code section 1040. Evidence Code section 1040 states in part that:

> (a) As used in this section, 'official information' means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.
>
> (b) A public entity has a privilege to refuse to disclose official information, and to prevent another from disclosing official information, if the privilege is claimed by a person authorized by the public entity to do so and: (1) Disclosure is forbidden by an act of the Congress of the United States or a statute of this state, or (2) Disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice; but no privilege may be claimed under this paragraph if any person authorized to do so has consented that the information be disclosed in the proceeding. In determining whether disclosure is against the public interest, the interest of the public entity as a party in the outcome of the proceeding may not be considered . . ."

In the San Gabriel case, the court concluded there was no showing that the respondent would be injured by disclosure of the data, nor was there evidence that disclosure of the information was against the public interest. In fact, the court found that, because the citizens would bear the cost of the rate increase, disclosure of the information weighed in favor of the public's interest.

A distinction was made by the court in San Gabriel in analyzing the Attorney General's opinion in 58 Cal. Op. Att'y Gen. 372 (1975). In that opinion, the Attorney General opined the details of proposed health plans were confidential and protected from disclosure by the State Department of Health, and that the details of the organization, operations, and financial status of the parties with whom the Department was negotiating were exempt under subsection (k). The opinion based its finding on (i) the commercial nature of the information that would be vulnerable to appropriation by a competitor, and (ii) the chilling effect revealing details of proposed health plans could have on the future development of such plans.

Stating that the exemption provided by subdivision (k) was conditional, the opinion concluded

> the very fact that a balancing process is contemplated requires that the privilege be considered conditional rather than absolute. As was stated by the court in People v. Superior Court 19 Cal. App. 3d 522 [97 Cal. Rptr. 118] (1971), 'Evidence Code section 1040 establishes a governmental privilege barring evidence of official information whose disclosure is against the public interest. The privilege is conditional in the sense that the court must weigh the necessity of preserving the confidentiality of the information against the necessity for disclosure in the interest of justice.'

The San Gabriel court concluded that the disclosure of confidential information regarding proposed prepaid health plans is distinguishable in that the City of West Covina had an existing contractual relationship with the disposal company, and that any chilling effect the disclosure might have did not outweigh the public's right to the information.

(3) Request for Information Regarding a Successful Bidder

Applying these holdings to a request for information regarding a successful bidder, one could conclude that the "balancing test" might weigh in favor of nondisclosure. Depending upon the type of information requested, and the status of the contractual negotiations with the bidder, the city could argue disclosure would jeopardize the negotiation process, thereby having a chilling effect on the successful completion of those negotiations.

While this argument might succeed if negotiations were still in progress, it seems less likely to prevail if a request is made after a contract is in place. The arguments against disclosure then turn on a claim that such information is commercial in nature and would be vulnerable to appropriation by a competitor.

(4) Federal FOIA Cases

Supporting the argument that at least certain information regarding a successful bidder can be exempt from disclosure is 5 U.S.C., section 552, the Freedom of Information Act (FOIA). Section (b)(6) of the FOIA exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

One of the leading cases interpreting this section is National Parks and Conservation Assn. v. Kleppe, 547 F.2d 673 (D.C. 1976). This case concerned whether the FOIA exemption regarding trade secrets could be used to withhold financial records filed by national park concessionaires. The court concluded that disclosure would probably cause substantial harm to the five concessionaires' competitive positions, although the court stated that the exception must be narrowly construed in keeping with the legislation's intent to insure comprehensive public access to governmental records.

Similar holdings have been reached in Shermco Industries Inc. v. Secretary of United States Air Force, 452 F. Supp. 306 (ND Tex 1978) (rev'd on other grounds), and Burke Energy Corp. v. Department of Energy, 583 F. Supp. 507 (DC Kan 1984). In Shermco Industries, the court stated that, while the exemption does not extend to all information given to the government, the exemption is designed to prevent unwarranted invasions of personal privacy which might be caused by the government's indiscriminate release of confidential information, and must be read narrowly in accordance with that purpose.

A further limitation on this exception is found in Brockway v. Department of Air Force, 518 F. 2d 1184 (CA8 Iowa 1975). But see Weber Aircraft Corp., Div. of Walter Kidde & Co. v. United States, 688 F. 2d 638 (CA9 Cal), rev'd on other grounds. In Brockway, the court concluded that the phrase "privileged or confidential" is intended to modify "commercial or financial information" so as to limit the class of commercial or financial information which is immune from disclosure to that which is privileged or confidential.

While the California Public Records Act does not contain a parallel exemption, it is possible to argue that Public Records Act exception (k), and Evidence Code section 1040, provide a basis for excluding "official information" acquired in confidence from a successful bidder or consultant. The extent of this exception, and the likelihood of prevailing in a challenge will be almost entirely dependent upon the nature of the information and the reason for the request.

(5) Other Exemptions

Government Code section 6254(n) exempts statements of personal worth or financial data required by a licensing agency and filed by any applicant with such licensing agency to establish the applicant's personal qualifications for a license, certificate or permit. The court in San Gabriel distinguished information requests about licensees from those requests involving contractors on the basis of the difference between the city's relationship with the two. Stating that a license is not a contract and does not confer an absolute privilege, the court found a distinction between those whose business with the local government is only public to the extent that they must comply with the licensing requirements and regulations, and those with whom the local government has a contractual arrangement.

The court found that those in the latter category were not just applying to the city for a license or permit to operate, but were assuming a city function that continues to be monitored and reviewed. Simply changing the form of that city function from one conducted by employees to one conducted by independent contractors does not immunize the records from disclosure.

A final subsection often cited as a possible basis for exempting records from disclosure is subsection (c), providing for an exemption for personnel, medical or similar files, on the basis that the disclosure of these files would constitute an unwarranted invasion of personal privacy. In analyzing the applicability of this exemption to contractual (i.e. commercial) information, the court in San Gabriel concluded that the purpose of the subsection (c) exemption was to protect information of a highly personal nature which is on file with a public agency.

The court stated that typically the exemption would apply to public employees' personnel folders or sensitive personnel information which individuals must submit to the government. Consequently, it seems unlikely that a court would apply this exemption to "commercial" records from bidders or consultants.

Absent a specific exemption, the final possible basis for a nondisclosure rests with Section 6255, which states that:

> The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

Once again, the balancing test described in 58 Cal. Op. Att'y Gen. 372 is central to a claim of exemption under this section. The facts of the particular case must clearly demonstrate that the public interest, as distinct from the interest of the bidder or consultant, is best served by nondisclosure. Consequently, it will be important to carefully explore the purpose behind the request before reaching a decision regarding disclosure.

b. Practice Tips

The Public Records Act, and the case law interpreting it, provide little in the way of definitive guidance to city attorneys faced with public records requests for information concerning successful bidders or consultants. In this area, perhaps more than most other requests under the act, the reasons for the request play a decisive role.

If the information gained is to be used solely for personal profit or professional advantage, it seems likely that a decision to withhold the information would be sustained. If, however, even a colorable argument can be made that the public benefit would be served through the disclosure, it would appear that disclosure of the information is required.

C.
Process Issues

by Stephanie Atigh, City Attorney, Salinas
Roger W. Krauel, City Attorney, Coronado, Del Mar and Encinitas

1. Request for Records Not Yet in Existence

A member of the public submits a request under the Public Records Act seeking all reports that a consultant will prepare during the future course of the city's consideration of a proposed project. Does the Act obligate the city eventually to disclose a public record (which is not in existence at the time of the request) if and when the document comes into existence after the request is made?

a. Analysis

Neither the Public Records Act nor case law directly answers the question. However, the overall scheme of the act suggests a request for a nonexistent record imposes no disclosure obligation on the city.

First, the Public Records Act considers "records" to be something existing, that is something that has been "prepared, owned, used or retained" by the city. Cal. Gov't Code § 6252(d). The requested record exists, having been recorded by "handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any form of communication or representation . . ." Cal. Gov't Code § 6252(e).

Second, to be sufficient under the Public Records Act, a request must seek "an identifiable public record." Cal. Gov't Code § 6257. Impliedly, a nonexistent record is not "identifiable."

Third, procedurally under the Public Records Act, a city is required to make the requested record "promptly" available following the request. If the record does not exist when the request is made, the city cannot promptly make it available.

Fourth, the Public Records Act gives a city 10 days to determine whether the requested record is exempt. Cal. Gov't Code § 6256. If a request is made for a non-existent record, a city would be unable in ten days to determine whether the non-existent record will include information which would be exempt from disclosure.

b. Practice Tips

Generally, there would appear to be good cause for a city not to disclose any documents in response to a Public Records Act request for a record not yet in existence. If the "record" subsequently comes into existence, another request under the Public Records Act should be required.

2. Use of Public Records as a Discovery Tool

A claimant/litigant files a claim/lawsuit alleging that the city's negligence caused injury in a particular incident. Thereafter, claimant/litigant files a request under the Public Records Act for public records to be used to find support for the allegation. Does the request under the Public Records Act require the city to disclose public records?

a. Analysis

The "pending litigation" exemption contained in California Government Code section 6254(b) exempts from disclosure under the Public Records Act records pertaining to:

- A claim made pursuant to the Tort Claims Public Records Act (commencing with California Government Code section 810); or
- Pending litigation to which the public agency is a party.

The "pending litigation" exemption has two limitations involving time. First, the "pending litigation" exemption shields qualified records only while the matter is pending, i.e. from the time the matter commences until the matter has been settled or finally adjudicated. Cal. Gov't Code § 6254.5.

Second, the Attorney General has opined the "pending litigation" exemption protects only those records pertaining to the matter that are prepared after the commencement of the claim or litigation. The exemption does not protect records prepared prior to the time the claim or litigation is commenced ("Prior Prepared Records").

The Attorney General observed that a Prior Prepared Record was previously available for disclosure when there was no "pending litigation" to bring into play the exemption's protection. The Attorney General argues that the Prior Prepared Record's previous availability forever waives any protection afforded by the "pending litigation" exemption. 71 Cal. Op. Att'y Gen. 235, 241 (1988).

The Attorney General's opinion very narrowly interprets "pertaining to litigation" to include only records prepared in response to the claim/litigation, while excluding all other records which contain information that relates to the substance of the dispute. In light of these limitations, when considering the "pending litigation" exemption, the city should always consider other exemptions that may protect Prior Prepared Records.

If neither the "pending litigation" exemption nor any other express exemption shields a Prior Prepared Record, the conditional exemption contained in Government Code section 6255 might be used. Under the conditional exemption, the city must demonstrate that the public interest served by nondisclosure of the requested record clearly outweighs the public interest served by disclosure of the record through the process of the Public Records Act.

There is a substantial public interest served by not requiring Prior Prepared Records to be disclosed through the Public Records Act's process, during the pendency of the matter.

The public has a very substantial interest in insuring that the city, as the public's representative, is in a fair and equal position to deal with an opponent's challenge. It places the city in an unfair and unequal position to be required to disclose Prior Prepared Records under the Public Records Act's process, when the opponent has no requirement under the Public Records Act's process. While the public's representative should not have a mandated, advantageous position in legal strife, neither should it be a second-class litigant. See generally Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 824, 176 Cal. Rptr. 342, ___ (1981).

Obligating the city to disclose Prior Prepared Records through the Public Records Act's process, as well as under the discovery process, unfairly requires the city (as the public's litigator) to deal with:

- The burden of double disclosure requests for the same document; one under the Public Records Act and the other under the formal discovery process;

- Two disclosure processes that can be sequenced by the opponent to the disadvantage of the public;

- Two disclosure processes whose procedures may conflict with one another; and

- Having to make a disclosure determination for purposes of litigation but within the abbreviated time period allowed by the Public Records Act for public records purposes; rather than within the longer time period allowed by the formal discovery process for litigation purposes.

Further, the city cannot fully prepare for the opponent's challenge if records are being given to an opposing party through the Public Records Act's process. Since the Public Records Act is to be administered liberally by the city to facilitate the disclosure of records, it is virtually impossible for the city's attorney to know about, let alone substantively review, requests for records under the Public Records Act.

Thus, under the Public Records Act's process, records relating to a pending claim or litigation can be disclosed to the opposing party without being called to the attention of the attorney defending the city. As a consequence, the city is not able to fully prepare a response to the opponent's potential use of those records.

Clearly, there is a substantial public interest served by not disclosing Prior Prepared Records under the Public Records Act's process.

During the pendency of the matter, whatever public interest there is in the disclosure of Prior Prepared Records through the Public Records Act is satisfied fully by the formal discovery process which:

- Makes available the disclosure of such records, even if the records are not disclosed under the Public Records Act while the matter is pending.

- Insures that the city's attorney will know about and be involved in deciding upon what records are being disclosed to an opposing party.

- Provides the city's attorney with the opportunity to raise proper objections to the request for a record, within a time frame appropriate for litigation.

b. Practice Tips

Therefore, when a claim or litigation first becomes pending, there is a supportable argument that the city can gather Prior Prepared Records which, during the pendency of the matter, are shielded by the conditional exemption from disclosure through the Public Records Act's process.

As an alternative, County of Los Angeles v. Superior Court (Kusar), 18 Cal. App. 4th 588, 600, 22 Cal. Rptr. 2d 409, ___ (1993), may provide support, by analogy, for arguing that the requirements of the Public Records Act should not be construed to result in the nullification of existing discovery procedures for obtaining documents for litigation. In County of Los Angeles, the court refused to construe the Public Records Act in a manner that would nullify the statutory "Pitchess" motion procedure for obtaining police personnel records.

3. Disclosure of the City's Litigation Expenditures

> *A member of the public submits a request under the Public Records Act seeking all billing statements submitted by the city's special counsel during the last 18 months. Under the Public Records Act, what, if anything, may the city withhold from disclosure?*

a. Analysis

An attorney's billing statement to a city may contain information which is shielded from disclosure by the attorney-client privilege, Cal. Evid. Code § 954, or the attorney work-product privilege, Cal. Civ. Proc. Code § 2018. See Williamson v. Superior Court, 21 Cal. 3d 829, 148 Cal. Rptr. 39 (1978); Lasky, Haas, Cohler & Munter v. Superior Court, 172 Cal. App. 3d 264, 271, 218 Cal. Rptr. 205, ___ (1985).

Recently, the ninth circuit listed the information in an attorney's billing statement that is shielded from disclosure by the attorney-client privilege under federal common law. Clarke v. American Commerce Nat. Bank, 974 F.2d 127, 129 (9th Cir. 1992), reh'g denied, 977 F.2d 1533 (1992):

Shielded information includes material that shows: the motive of the client in seeking representation, the specific nature of services provided, the litigation strategy, the direction and results of legal research, the attorney's impressions/conclusions, and any other materials of a derivative or interpretative nature.

b. Practice Tip

Usually, the following information would not be shielded: the amount of the fee, the identification of payment and the general purpose of the work performed.

4. Absentee Ballot Records

A member of the public submits a request under the Public Records Act seeking all records relating to absentee ballots and the election last week. Under the Public Records Act, what, if anything, may the city withhold from disclosure?

a. **Affidavit of Registration of the Absentee Voter**

The affidavit of registration of an absentee voter is statutorily made a public record by Elections Code section 511.5(a), unless the voter has been judicially granted confidentiality in accordance with Elections Code sections 511.5(b) and (c).

b. **Written Application Filed by a Registered Voter to Obtain An Absentee Ballot; California Elections Code § 1002**

The Attorney General is of the opinion that applications for absentee ballots meet the definition of public records contained in Government Code section 6254. After examining the exemptions to disclosure that may apply in particular cases, the Attorney General finds that, in the general case involving the balancing of public interests, disclosure outweighs non-disclosure; and disclosure is required. See 76 Cal. Op. Att'y Gen. 235 (1993).

Unless a specific exception applies in a particular case (for example, the voter has obtained a court order for confidentiality), the Attorney General advises that both unprocessed and processed applications are public records and must be made available to the public for inspection.

Note: Unprocessed applications have not been verified and may contain errors. The election official must compare the signature on the application with the signature on the registration to verify the application. Cal. Elec. Code § 1007(a). Also, errors in the application must be corrected before an absentee ballot can be sent. Cal. Elec. Code § 1007(c). Therefore, publicly disclosing unprocessed applications may cause the dissemination of information that is misleading, erroneous and confusing.

c. List of Voters Applying For and Receiving Absentee Ballots

The list must be provided to the precinct election inspectors before election date. Cal. Elec. Code § 1010. The Attorney General opines that the list is public information and must be made available for public inspection.

d. Voted Absentee Ballots

In accordance with Elections Code section 1404(a), the public can see the absentee ballots being opened, counted and processed. Processing of the absentee ballot is completed when the ballot is packaged in accordance with Elections Code sections 14810(b) and 14811(b).

e. Processed Absentee Voter Ballots

After the voted absent voter ballots are packaged, together with the absent voter identification envelopes and the spoiled, canceled and unused absentee voter ballots, the package is held unopened and unaltered for the statutorily specified period. The contents are then destroyed. See Cal. Elec. Code §§ 14810(c) and 14811(c).

5. E-mail, Back-up Tapes and Erasures

A member of the public submits a request under the Public Records Act seeking records relating to the lay-off of several city employees as part of the reorganization of the planning department. Under the Public Records Act, are there electronically stored records that need to be considered as being included within the scope of the request?

a. Analysis

(1) Status of Electronic Data

The following discussion focuses on electronically stored public records held by a city. California Government Code section 6252 provides that the public record can be found on ". . . any writing . . . regardless of physical form or characteristics" and defines "writing" as including every ". . . means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents."

The Attorney General opines that "public record," as defined by California Government Code section 6252, is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed. See 58 Cal. Op. Att'y Gen 629, 633-634 (1975).

Therefore, the contents of a city's computer system should be approached as a treasure-trove of "public records" that might have to be disclosed upon request.

(2) Where to Look

Anyone with access to a computer terminal in the city's computer system can place a record in the city's electronic storehouse which is then accessible by going to: (1) the menus viewable on the screen, (2) the floppy disks on the shelf, (3) the backup files, (4) the backup tapes, or (5) by going into the depths of the system's electronic storage capacity. These records could include ill-considered, unguarded, uncontemplated verbiage as well as superseded drafts.

(3) E-Mail

A message left on the menu after receipt may become a public record. A message retained on the E-Mail backup system may become a public record.

(4) Superseded Drafts

Electronic word processing allows ample opportunity for redrafting. Retaining prior drafts can establish an electronic trail of the creation of the final document.

(5) Deleted File

A data file that has been deleted by the operator from the viewable menu may nonetheless be retained and available in the backup system.

(6) Erased Data

Data that has been erased by the operator may be restorable by a computer specialist.

(7) Damaged Disk

Data on an "unreadable" damaged disk may be restorable by a computer specialist.

(8) Database Product

A database generally contains separate data entries about individual occurrences. The operator can retrieve the data in various forms that arrange the individual data entries to depict such things as relationships, developmental sequences, or trends.

Based on a public records request, the computer system might be used to combine the data in a manner that depicts a relationship that surprises the city with an unfavorable product.

(9) Access Codes

Access codes can limit the number of operators that can gain access to the system to create and retrieve protected data. Access codes can also cause the accumulation of data since the lack of access may reduce the motivation to purge files regularly. Access codes do not shield the data from disclosure upon request under the Public Records Act.

b. Practice Tips

The city's electronic records are subject to the retention, destruction and disclosure requirements of the Public Records Act, in the same manner as any other city record. The real differences relate to:

- the number of electronic records that the city might have unintentionally created and
- the possibility that an exemption that would have shielded a certain record from disclosure might have been waived because the record was electronically stored in a nonconfidential manner.

Do not wait for a public records request before learning what the city's electronic records system can do. Choose a computer system and establish policies and procedures to meet the city's information needs. Address the following:

- Proper and Improper substantive use of the system;
- Retention of drafts;
- Back-up of E-Mail;
- Back-up of word processing documents; and
- Deletion/erasure of data and files.

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DISCLOSURE OF POLICE RECORDS

by Jimmy L. Gutierrez

Legislative Scheme

The legislative scheme of the Public Records Act (PRA) requires and encourages disclosure of virtually all information maintained by public agencies. Police records, like all other information maintained by public entities, is subject to the same statutory scheme regarding disclosure in general. However, the exemptions for police records contain a meticulous mixture of required disclosures, permitted disclosures, prohibited disclosures and real exemptions from disclosures.

The disclosure of police records is best understood against the legislative scheme of the Public Records Act (PRA) requiring and encouraging disclosure of most information maintained by police agencies. The following provisions of the PRA demonstrate this legislative scheme:

1. Government Code Section 6250 provides as follows:

   In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

2. Government Code Section 6253.1 provides as follows:

   Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.

3. Government Code Section 6254 provides as follows:

   Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

   Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

4. Government Code Section 6254.5 provides as follows:

   Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law.

5. Government Code Section 6255 provides as follows:

> The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

6. Government Code Section 6257:

> Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.

This paper seeks to identify the statutes and recent court decisions applicable to a proper response to PRA requests seeking records or information maintained by police departments.

1. 911 Tapes

Essentially, 991 tapes contain information from members of the public who either request assistance and/or report activities of others some of which may be criminal.

For the most part, disclosure of the subject matter contained in 911 tapes, but not the tapes themselves, is governed by Government Code Section 6254(f) which exempts "records of complaints" but not calls for assistance. However, this exemption is nearly swallowed by the language of the section which mandates disclosure of the following information which would normally appear on the 911 tapes:

> (2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 or the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved.

There are several situations in which disclosure is not required. The name of a victim to a designated crime may be withheld but only at the request of the victim or the victim's parent or

guardian if the victim is a minor. Also, a particular item of information may be withheld where it reasonably appears that disclosure of a particular item of information would endanger the safety of a person conducting an investigation or the successful completion of an investigation. Finally, any other information regarding complaints to the police agency whose disclosure is not specifically required may be withheld. Black Panther Panther vs Kehoe (1974) 42 Cal.App.3d 645, 117 Cal.Rptr. 106.

There are several situations in which disclosure is absolutely prohibited. For example, the address of the victim of certain crimes designated in Section 6254(f)(2) cannot be disclosed to anyone. Likewise, Penal Code Section 841.5 prohibit employees of a police agency from disclosing to "any arrested person, or to any person who may be a defendant in a criminal action" the address or telephone number of any person who is a victim or witness in the alleged offense.

Finally, Government Code Section 6252(f), does not require the disclosure of actual 911 tapes. Likewise nothing prevents their disclosure provided that exempt information in the tapes should be eliminated as permitted by Government Code Section 6257.

2. Police Reports

Police reports contain a variety of factual information and theories of the commission of crimes derived from the many sources including members of the public and the investigative efforts of peace officers.

For the most part, disclosure of the subject matter contained in police reports is governed by Government Code Section 6254(f) which exempts "Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of . . . or any investigatory or security files compiled by" any local police agency. However, this exemption is subject to the mandate of the same section which requires disclosure of the following information:

> the name and address of persons involved in, or witnesses other than confidential informants to, the incident, the description on any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident . . . and any person suffering bodily injury or property damage or loss . . .
> (1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual

circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

Likewise, Vehicle Code Section 20012 established the confidentiality of traffic accident reports except to the parties so involved.

There are several situations in which disclosure is not required. The victim's name of a designated crime may be withheld but only at the request of the victim or the victim's parent or guardian if the victim is a minor. Also, a particular item of information may be withheld where it reasonably appears that disclosure of a particular item of information would endanger the safety of a person conducting an investigation or the successful completion of an investigation. Next, that portion of those investigative files which reflect the analysis or conclusions of the investigating officer may be withheld. Finally, any other information regarding complaints to the police agency whose disclosure is not specifically required may be withheld. Black Panther Party vs Kehoe (1974) 42 Cal.App.3d 645, 117 Cal.Rptr. 106.

There are several situations in which disclosure is absolutely prohibited. For example, the address of the victim of certain crimes designated in Section 6254(f)(2) cannot be disclosed to anyone. Likewise, Penal Code Section 841.5 prohibits employees of a police agency from disclosing to "any arrested person, or to any person who may be a defendant in a criminal action" the address or telephone number of any person who is a victim or witness in the alleged offense.

3. Information on Crime Victims

Surprisingly, very little information about crime victims can be withheld. Government Code Section 6254(f) designates the information about a crime victim which must be disclosed. However, the name of a victim to a designated crime may be withheld but only at the request of the victim or the victim's parent or guardian if the victim is a minor.

Further, the address of the victim of certain crimes designated in Section 6254(f)(2) cannot be disclosed to anyone. Likewise, Penal Code Section 841.5 prohibits employees of a police agency from disclosing to "any arrested person, or to any person who may be a defendant in a criminal action" the address or telephone number of any person who is a victim or witness in the alleged offense.

4. Police Officer Personnel and Citizen Complaint Records

A police officer's personnel file may contain a variety of "records" which are actual complaints, or which can be construed as complaints, about some aspect of the police officer's performance of his or her duties. The "complaints" may originate from citizens or from the police officer's supervisors or peers. In addition, a police officer's personnel file may contain "records" of the department's investigation and findings regarding those complaints.

Requests for such records of complaints may be made in one of two ways. They are either made in letter form under the PRA or by way of motion in an existing lawsuit in which the employing agency may or may not be a party. The statutory scheme creates separate procedures for disclosure of such records of complaints. This paper addresses only requests made under the PRA for "records of complaints" made against a police officer and related records of subsequent investigations and findings regarding those complaints.

The following subdivisions of Government Code Section 6254 contain exemptions which can justify withholding police officer's personnel records:

> (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.
>
> (f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of . . . any state or local police agency . . . or any investigatory or security files compiled by any other state or local police agency for correctional, law enforcement, or licensing purposes ...
>
> (k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

The exemption available under Government Code Section 6254(f) hereafter "subdivision (f)" appears to be the most effective to justify withholding "records of complaints" made against a police officer when they are the subject of a PRA request.

In Williams v Superior Court (1993) 5 Cal.4th 337, 19 Cal.Rptr.2d 882, the Supreme Court ruled subdivision (f) permitted the San Bernardino County Sheriff to refuse to disclose its files pertaining to administrative investigations and disciplinary proceeding against its deputies in response to a PRA request by the Daily Press. The Daily Press had requested any "reports of disciplinary proceedings" and any "recommendations from a deputy chief's review board."

Thereafter, the Daily Press initiated a proceeding for review under the PRA. After considerable litigation in the trial and appellate courts, the Supreme Court made important rulings on the meaning and scope of the exemption contained in subdivision (f) as all other basis of exemptions were abandoned by Sheriff Williams. It held that Government Code Section 6259 authorizes the superior court, upon a sufficient showing, to examine records in camera to determine whether they are being improperly withheld. With respect to subdivision (f), the Supreme Court held that:

(1) It articulates a broad exemption from disclosure for law enforcement investigatory records.

(2) It requires law enforcement agencies to provide certain information derived from the records about the incidents under investigation.

(3) It permits the withholding of information that (a) would endanger the safety of a witness or other person, (b) would endanger the successful completion of an investigation, or (c) reflects the analysis or conclusions of investigating officers.

(4) In ruling upon an exemption under subdivision (f), the superior court should not consider the criteria of the Freedom of Information Act (FOIA)

(5) Information in public files becomes exempt as investigatory material only when the prospect of enforcement proceedings becomes concrete and definite.

(6) The exemption of subdivision (f) for investigatory files does not terminate when the investigation terminates.

Williams is important for many other reasons including the apparent view of the Supreme Court that the provisions of the PRA will be strictly interpreted and applied. In this regard, it rejects the infusion of the criteria of the FOIA into the PRA. It leaves open the issue of the role of the right to privacy under the California Constitution.

In County of Los Angeles vs Superior Court (1993) 18 Cal.App.4th 588, 22 Cal. Rptr.2d 409, the court denied a PRA request seeking all of the information required by subdivision (f) as to each individual arrested by two named deputy sheriffs during a ten year period. The same information had been sought by, but refused to, the attorney (Ernest Gould) for the petitioner (J. Ara Kusar) in a discovery proceeding involving a civil action brought by another client (Frank McMurray) of Attorney Gould alleging excessive force against Los Angeles County deputy sheriffs.

Because subdivision (f) does not prescribe the period over which a police agency was required to search for information, the court

engaged in statutory construction. It appears to have accepted the county's position that subdivision (f)(1) and (2) authorizes disclosure "only of contemporaneous information relating to persons currently within the criminal justice system." However, this is not absolutely clear. Therefore, there is no limit placed on the period during which a police agency is required to comply with PRA requests made under subdivision (f). The meaning of "contemporaneous information" will likely cause future litigation.

The court based its interpretation on the statutory language, the legislative history, the availability of parallel statutory procedures in unrelated litigation, and the cost to the police agenoy of complying with such broad requests.

This case implies that the courts will not allow the PRA to be a substitute for a failed discovery attempt in unrelated litigated cases

This paper has focused on requests made under the PRA, but requests are also made under the provision of Evidence Code Section 1043 in pending criminal and civil cases to which the public agency is not a party. The law and procedure pertaining to these requests are wholly distinct and independent of the PRA. Bradshaw vs City of Los Angeles (1990) 221 Cal.App.3d 908, 270 Cal.Rptr. 711.

Summary

Once a request has been made for police records or information containaed from those records under the PRA, a proper response should start with an anlysis of the request and the reason for the request. Once this is known, a careful review of Government Code Section 6254(f) should reveal the information which must be disclosed, which information must be withheld and which information may be withheld.

With respect to "records of complaints" against police officers, such records are exempt although certain information must be disclosed. Carefull attention should be given to the recent cases (i.e. Williams vs Superior Court, supra, and County of Los Angeles vs Superior Court, supra). Although these cases support the police agency's desire to withhold such information, there are some unresolved issues.

Under Willimas, information in public files becomes exempt as investigatory material only when the prospect of enforcement proceedings becomes concrete and definite. The meaning of this condition should create some oontroversy.

Under County of Los Angeles, the meaning of "contemporaneous information" should also create some controversy as to the period for which information from police reports must be provided.

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Appendices

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Appendix A

Checklist on Disclosure of Closed Session Actions

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Checklist on Action and Vote Disclosure in Open Session After Closed Sessions

Please use only after reviewing section I.D.4. of the practice guide and its practice tips.

AGREEMENTS CONCLUDING REAL ESTATE NEGOTIATIONS

WHEN GENERALLY: After agreement is final

If City Action Finalizes Agreement

What To Report
- The approval action
- Voting tally
- Substance of the agreement

When To Report
- After the closed session
- In open session
- During the same meeting

If Other Party Must Finalize Agreement

What To Report/Disclose
- No report is required; however, *upon inquiry* by any person, disclose:
  - The approval action
  - Voting tally
  - Substance of the agreement

When To Disclose
- Upon inquiry, or
- As soon as other party has informed city of its approval

DISPOSITION OF JOINT POWERS AGENCY CLAIMS

What To Report
- Voting tally
- Name of claimant
- Name of local agency claimed against
- Substance of claim
- Monetary amount approved for payment and agreed upon by the claimant, if any

When To Report
- "As soon as (disposition of the claim is) reached"
- (Statute does not specify whether an open session report must be made or whether disclosure upon inquiry is sufficient)

ACTIONS AFFECTING EMPLOYMENT STATUS OF PUBLIC EMPLOYEES

What To Report
- Any action taken to
  - Appoint
  - Employ
  - Dismiss
  - Accept the resignation of, or
  - Otherwise affect employment status of public employee
- Voting tally
- Title of position
- Any change in compensation

When To Report
- If Dismissal Or Non-renewal Of Employment Contract **Is Subject To Further Administrative Remedies**
  - Report deferred until first public meeting following exhaustion of administrative remedies

All Other Employment Actions
- After the closed session
- In open session
- During the same meeting

APPROVAL OF AGREEMENTS CONCLUDING LABOR NEGOTIATIONS

What To Report
- The item approved
- Voting tally
- Other party

When To Report
- After agreement is final, and
- Has been accepted or ratified by other party
- (Statute does not specify whether open session report must be made or whether disclosure upon inquiry is sufficient)

APPROVAL OF LITIGATION DEFENSE, APPELLATE REVIEW, OR AMICUS CURIAE PARTICIPATION

What To Report
- The approval action
- Adverse parties (if known)
- Substance of the litigation
- Voting tally

When To Report
- After closed session
- In open session
- During same meeting

APPROVAL OF PENDING LITIGATION SETTLEMENTS

WHEN GENERALLY: After settlement is final

If City Action Finalizes

What To Report

- The acceptance action
- Voting tally
- Substance of agreement

When To Report

- After closed session
- In open session
- During same meeting

If Other Party Or Court Finalizes

What To Report/Disclose
- No report is required; however, *upon inquiry* by any person, disclose:
  - The fact of approval action
  - Voting tally
  - Substance of agreement

When To Disclose
- As soon as other party informs city of its approval

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APPROVAL GIVEN TO INITIATE OR INTERVENE IN LITIGATION

Before Action Has Been Commenced

What To Report
- Direction to initiate/intervene given
- The action, defendants and other particulars will be disclosed
  - Upon inquiry
  - Once action formally commenced, *Unless* disclosure jeopardizes process service/conclusion settlement negotiations

When To Report
- After closed session
- In open session
- During same meeting

After Action Formally Commenced

If Disclosure Does Not Jeopardize Service of Process/Existing Settlement Negotiations

What To Disclose
- The approval action
- Voting tally
- Defendant(s)
- Other particulars, presumably including substance of litigation

When To Disclose
- Upon inquiry

If Disclosure Jeopardizes Service of Process/ Existing Settlement Negotiation Conclusion

What To Disclose
- No disclosure required until process served/settlement negotiations concluded. Thereafter, disclose:
  - The approval action
  - Voting tally
  - Defendant(s)
  - Other particulars, presumably including substance of litigation

When To Disclose

- No disclosure required until process served/settlement negotiations concluded
- Thereafter, disclosure required only upon inquiry

Appendix B

Closed Session Form

by Ariel Pierre Calonne, City Attorney, Palo Alto

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Closed Session Report

Date of Closed Session: _____, 199_

Name of Case and Court Number (if applicable): _____

_____

Action(s) Taken: _____

_____

_____

Council Members Present (line out absentees) and Their Votes:

Name	Aye	No	Abstain	Not Participating
A				
B				
C				
D				
E				
F				
G				
H				
I				
Voting Tally				

Non-Disclosure Recommended (check if yes) ☐

Legal Justification (if yes):

Disclosure would interfere with service of process ☐ Disclosure would impair ability to settle ☐

Explanation: _____

_____

_____

_____

Approved:

I. Lex Muni
City Attorney

By: _____
Dated: _____

NOT A PUBLIC RECORD

UNTIL THE INFORMATION IN THIS BOX IS COMPLETED, SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE CITY ATTORNEY'S OFFICE AND STAMPED IN THE SPACE BELOW

Date Litigation Concluded:

_____, 199_

By: _____

Title: _____

[STAMP HERE]

940107 apo 0051065

Appendix C

Chart Summarizing Brown Act Revisions

by Peter N. Brown, City Attorney, Carpinteria

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BROWN ACT REVISIONS
AB14261 / SB36 / SB1140

LEAGUE OF CALIFORNIA CITIES

City Attorneys Department
10/18/93

(Chart Does Not Include Unamended Sections - Changes Operative 4/1/94)

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54952, 54952.2, 54952.3, 54952.5	Legislative Body, Definitions • Governing Body. • Body exercising delegated authority. • Advisory Committees (LTAQ exception). • Permanent Boards and Commissions.	54952	Legislative Body, Definition • Governing Body. • Commissions/Committees. • "Standing" Advisory Committees with continuing subject matter jurisdiction or meeting schedule fixed by formal action. • Ad-hoc LTAQ exception? • Private Corporations created by or receiving funds from legislative body. • Hospital lessees.
		54952.1	Member of Legislative Body, Definition • Includes newly-elected member of legislative body.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
		54952.2	Meeting, Definition • Congregation of majority of members. • Direct communication/use of intermediaries/technology creating serial meeting. • Exceptions: a. Individual contacts between citizens and members; b. Conferences or gatherings dealing with issues of "General interest." No discussion of agency business by members permitted. c. Community meetings not organized by legislative body. No discussion of agency business by members permitted. d. Social gatherings. No discussion of agency business by members permitted.
54952.7	Copies of Brown Act to Members of Legislative Body of Local Agencies • Copies of Brown Act may be provided to Members	54952.7	Copies of Chapter to Members of Legislative Body of Local Agencies • Copies of Brown Act may be provided to Members and Newly-Elected Members.
54953	Public Meetings to be Open and Public • All meetings shall be open and public.	54953	Meetings to be Open and Public; Attendance; Video Teleconferencing; Secret Ballots • Deletes 1/1/94 Sunset Clause. • Prohibits any action by secret ballot.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54953.5	Recording of Meetings • The public has a right to tape record; right can be restricted if legislative body makes reasonable finding that recording "constitutes, or would constitute, a disruption."	54953.5	Recording of Meetings • Public has a right to audio/video tape record. Right can be restricted if legislative body makes reasonable finding that recording "cannot continue without noise, illumination, or obstruction of view which constitutes, or would constitute, a disruption." • Any tape made at direction of local agency is public record under PRA. May be erased 30 days after recording. Local agency must provide public with right of inspection "without charge on a tape recorder made available by the local agency."
		54953.6	Broadcast of Proceedings (Analogue to 54953.5 for press/T.V.) • Recording can be restricted on reasonable finding that broadcast "cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings."

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954	Time and Place of Regular Meetings • Legislative body must provide for time of regular meetings. • Legislative body need not meet within local jurisdiction. • If regular meeting falls on a holiday, held on next business day. • In emergency, meetings held at location designated by presiding officer.	54954	Time and Place of Regular Meeting; Holidays; Emergencies • Legislative body must provide for time and place of regular meetings. • Legislative body must meet within local jurisdiction. • Exceptions: a. Compliance with law; b. Real property inspection; c. Multi-agency discussions; d. No local meeting facility; e. Meeting with U.S./State officials; f. Meeting in out of jurisdiction facility (okay if topic of meeting concerns that facility); g. Office of legal counsel "where to do so would reduce legal fees/costs." • School district provisions. • JPA provisions. • In emergencies, meetings held at location designated by presiding officer if notice goes to media "by most rapid means of communication available at the time." • No requirement that regular meetings, falling on holiday be held on next business day.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.2	Agenda Posting; Action on Other Matters • 72-hour posting of agenda. • No action permitted on nonagendized items. • Exceptions: a. Emergency; b. 2/3 vote (unanimous if less than 2/3 present) upon finding "that need to take action arose" subsequent to posting; c. Continuance of item from meeting held not less than 5 days previously.	54954.2	Agenda Posting; Action on Other Matters • Closed session items must be specified in 72-hour posted agenda. Agenda item description need not exceed 20 words. • Specification of permissible responses to public comment which raises nonagendized items. • No action permitted on nonagendized items. • Exceptions: a. Emergency; b. 2/3 vote (unanimous if less than 2/3 present) upon finding" that there is a need to take immediate action and that need for action came to the attention of the local agency" subsequent to posting; c. Continuance of item from meeting held not less than 5 days previously.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.3	<u>Opportunity for Public to Address Legislative Body</u> • Must be provided at regular meetings. • Need not provide public comment when matter has already been considered by committee composed exclusively of members of legislative body and public comment was taken, unless substantial change. • Legislative body may adopt reasonable regulations, including time limits.	54954.3	<u>Opportunity for Public to Address Legislative Body; Adoption of Regulations</u> • Must be provided at regular meetings. • Need not provide pubic comment when matter has already been considered by committee composed exclusively of members of legislative body and public comment was taken, unless substantial change. • Every special meeting must provide opportunity for public comment on items considered at special meeting. • Legislative body may adopt reasonable regulations, including time limits. • Legislative body "shall not prohibit public criticism of the policies, procedures, programs, or services of agency or acts or omissions of the legislative body." Does not confer privilege/protection beyond that otherwise provided by law.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
		54954.5	<u>Closed Session Agenda Descriptions</u> • Agency may describe closed sessions as provided below. No violation of 54954.2 if closed session items are described "in substantial compliance with this section." License/permit determination (54956.7). Conference with real property negotiator (54954.8). Conference with legal counsel - existing litigation (54956.9). Conference with legal counsel - anticipated litigation (54956.9). Liability claims (54956.95). Threat to security/public employee appointment/employee evaluation/discipline (54957). Conference with labor negotiator (54957.6). Multi-jurisdictional drug case review/planning (54957.8). Hospital board of directors; medical audits/quality assurance committees (54962; Health and Safety Code).

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.6	New or Increased Taxes or Assessments; Hearings; Notice • Before adopting new or increased tax or assessment, legislative body shall conduct one public meeting and noticed public hearing. • 45 days' notice required. • Contents of notice specified. • Agency may recover costs of the meeting/hearing/notice.	54954.6	New or Increased Taxes or Assessments; Hearings; Notice • Public meeting and public hearing still required. • "New or increased assessment" defined. • Notice for public meeting and public hearing shall be given together. • Time periods within which public meeting and hearing must be held or specified. • Contents of notices are given further specification.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54956.9	<u>Pending Litigation; Closed Session</u> • Closed session appropriate where a. Adjudicatory proceeding has been initiated; b. Significant exposure to litigation "based on existing facts and circumstances; c. Local agency has decided to initiate or is deciding to initiate litigation; • Prior to closed session, legislative body shall state under which section closed session is held. • Legal counsel shall prepare memorandum.	54956.9	<u>Pending Litigation; Closed Session; Abrogation of Privilege; Notice</u> • Closed session appropriate where a. "Litigation" has been initiated (litigation defined); b. Significant exposure to litigation "based on existing facts and circumstances"; • "Existing facts and circumstances" defined within limited set of situations: (1) facts not known to potential plaintiff: no disclosure required; (2) facts known to potential plaintiff: must be disclosed; (3) tort claim: claim must be available for inspection per 54957.5; (4) statement made in open meeting threatening litigation; (5) statement made outside open meeting threatening litigation, if public official makes contemporaneous record, which must be available for public inspection per 54957.5. Victim of tortious sexual conduct need not be identified; (6) no required disclosure of materials which are privileged under PRA. • Prior to closed session, legislative body shall state on agenda or publicly the subdivision which authorizes session. • Local agency considered "party" or have significant exposure to litigation if officer/employee is party or has significant exposure during course and scope of employment. • Requirement for legal counsel memorandum deleted.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957	Closed Session (Personnel Matters) • Closed session re appointment employment, evaluation of performance, dismissal, or to hear complaints re employee, unless employee requests public hearing (no procedure for request provided). • "Employee" specifically includes City Manager, City Attorney, Department Head, City Engineer, etc. "Employee" excludes elected officials or officials appointed by legislative body. • Board/commission/committee may hold similar closed personnel meetings.	54957	Closed Sessions; Threat to Public Services; Personnel Matters; Exclusion of Witnesses • Closed session re appointment, employment, evaluation of performance, dismissal, or to hear complaints re employee, unless employee requests public session. Employee must be given 24-hour notice (personal delivery or mail) of right to have matter heard in open session. If notice not given, any action taken is void. • "Employee" includes officer and independent contractor who functions as officer, but excludes elected official, member of legislative body, or other independent contractors. • Closed sessions held under this section "shall not include discussions of a local agency's available funds, funding priorities, or budget." • Right of boards, commissions, committees to hold closed sessions on personnel has been deleted.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957.1	Closed Sessions; Public Report of Action Taken • Legislative body must report after closed session or at next meeting any action (and roll call vote) to appoint, employ, or dismiss public employee arising out of closed session.	54957.1	Closed Sessions; Public Report of Action Taken • Legislative body must report in open session any action taken in closed session (and vote/abstentions) for all classes of closed session items: a. Approval of real estate negotiations (if final approval by agency, reported in public session; if final approval by other party, disclosure on inquiry once approval gained); b. Approval to (initiate), defend, seek/refrain from seeking appellate review, or file amicus curiae brief in any litigation. Adverse parties may or may not need to be identified; c. Approval to settle litigation shall be reported after settlement is final (if final approval by agency, reported in public session; if final approval by other party, disclosure on inquiry once approval gained); d. Disposition as to claims shall be reported as soon as reached (elements to be reported are specified); e. Action to appoint, employ, dismiss, accept resignation of, or "otherwise affect" employment status of employee shall be reported at same session as closed session held. Title of position/change in compensation must be stated. Tolling of announcement shall be deferred until administrative remedies exhausted; f. Agreement re labor negotiations shall be reported once agreement is final. The report shall identify "the item approved." • Reports hereunder may be oral/written. Copies of contracts, settlement agreements, or other documents approved or adopted in closed session must be provided to persons making written or standing request if requester is present at conclusion of closed session. If retyping required, oral summary must be provided to requester and document provided when retyped. Documents shall be provided to all persons by next business day following meeting or when retyping is complete.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
			• No requirement that legislative body approve actions not otherwise subject to legislative body approval. • No action for injury to reputation/liberty/personal interest may be commenced by employee/former employee if disclosure made by legislative body "In an effort to comply with this section."
54957.5	<u>Agendas and Other Writings Distributed for Discussion or Consideration at Public Meeting</u> • Writings distributed to majority of legislative body by agent for legislative body are public records. If distributed prior to meeting, shall be made available on request prior to meeting; if distributed during meeting and prior to discussion, shall be made available prior to and during discussion; if distributed during discussion, shall be made available immediately or as soon thereafter as practical. • Writings described above are subject to PRA. Section shall not be construed to be applicable to writings solely because they are properly discussed in closed session.	54957.5	<u>Agendas and Other Writings Distributed for Discussion at Public Meetings; Public Records; Inspection; Closed Sessions</u> • Writings distributed to majority to legislative body by any person are public records, and shall be made available without delay. • Writings distributed during public meetings shall be made available during public meeting if prepared by public agency, or after the meeting if prepared by some other person. • Section shall not be construed to limit or delay public's right to inspect records required to be disclosed under PRA. • Exception regarding documents considered in closed session has been deleted.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957.6	Closed Sessions; Legislative Body of Local Agencies; Salaries, Salary Schedules or Fringe Benefits; Mandatory Subjects • Closed session authorized for discussion of salaries/salary schedules/ fringe benefits for represented and unrepresented employees. Agency may review position and instruct agency's designated representative. • Committees/commissions may also hold closed sessions.	54957.6	Closed Sessions: Legislative Body of Local Agencies; Salaries; Salary Schedules or Fringe Benefits; Mandatory Subjects • No change in law, except a. Closed session may also be held for any matter within statutorily-provided scope of representation for represented employees; b. Committees/commissions may no longer hold closed sessions; c. "Employee" includes officers/independent contractor who functions as officer or employee, but not elected official, member of legislative body, or other independent contractors.
54957.7	Closed Sessions: Disclosure of Items to be Discussed • Prior to the closed session, legislative body shall state general reason for session, and may cite statutory authority. For special, adjourned, and continued meetings, statements shall be part of the notice of the meeting.	54957.7	Closed Sessions; Disclosure of Items to be Discussed; Notice • Prior to closed session, legislative body shall disclose items to be discussed in closed session. Disclosure may be by number or letter on the agenda. After closed session, legislative body shall reconvene in open session and make disclosures required by 54957.1. These disclosures can be made at the location of the closed session, so long as public is entitled to be present for announcement.
54959	Penalty for Unlawful Meeting • Liability imposed if meeting held "with knowledge of the fact that the meeting is in violation" of Brown Act.	54959	Penalty for Unlawful Meeting • Liability imposed for meeting "with wrongful intent to deprive the public of information to which it is entitled" under the Brown Act.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54960	Action to Prevent Violations or Determine Applicability of Chapter • "Any interested person" may sue to prevent violations or threatened violations or to determine applicability of Brown Act to actions or threatened future actions.	54960	Action to Prevent Violations or Determine Applicability of Chapter • District Attorney or any interested person may sue to prevent violations or threatened violations to determine applicability of Brown Act to actions or threatened future actions, to determine the validity of any rule or action by legislative body to penalize or discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions. • Tape recording: a. Upon judgment of violation, court may order tape recording of closed sessions and the preservation of tapes "for the period and under the terms of security and confidentiality the court deems appropriate"; b. Each recording labeled with date and custodian; c. Discovery Procedures: (1) Written Notice of Motion; (2) Identification of date re recorded meeting; (3) "Affidavit which contains specific facts indicating that a violation of the Act occurred in closed session"; (4) In camera review by court; (5) If court concludes that disclosure "would be likely to materially assist in resolution of the litigation," the court shall make a certified transcript of the portion of the tape recording a public exhibit in the proceeding. • Nothing in this section shall permit discovery of communications which are protected by the attorney/client privilege.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54960.1	<u>Unlawful Action by Legislative Body</u> • Any person may sue to obtain determine that legislative body's action is null and void. • Prior to suit, written demand must be made to cure or correct. Demand must be made within 30 days from date action taken. Legislative body may cure within 30 days. If legislative body does not cure, 15 day time limit to file suit begins to run on the 30th day. Time period to sue: a. 15 days from receipt of legislative body's decision to cure or correct; b. 15 days from expiration of 30-day notice to cure and correct; c. 75 days from date challenged action taken; whichever is earlier. • Action in violation of Brown Act shall not be deemed to be null and void if a. Substantial compliance; b. Action taken in connection with sale/issuance of note, etc.; c. Action gave rise to contractual obligation, upon which party in good faith has relied; d. Action in connection with tax collection. • If evidence is produced showing cure of alleged violation, legal action shall be dismissed with prejudice. • Subsequent action to cure or correct by legislative body not admissible.	54960.1	<u>Unlawful Action by Legislative Body; Action for Mandamus or Injunction; Prerequisites</u> Changes to Section are as follows: • District Attorney may sue. • Demand within 90 (not 30) days of action, unless action taken in open session, for which 30 day statute applies. • Suit must be brought within 15 days of receipt of legislative body's decision to cure or correct, or to not cure or correct, or within 15 days of expiration of 30-day period to cure or correct. • Action in violation of Brown Act shall not be deemed to be null and void if a. Substantial compliance; b. Action taken in connection with sale/issuance of notes, etc.; c. Action gave rise to contractual obligation, other than compensation for services in the form of salary or fees for professional services, upon which party in good faith and without notice of challenge to validity of action detrimentally relies; d. Action in connection with tax collection; e. Plaintiff received actual notice of the item of business to be discussed (72 hours for regular meeting, 24 hours for special meeting, or prior to emergency meeting). • If evidence is produced showing cure of alleged violation, legal action shall be dismissed with prejudice. • Subsequent action to cure or correct by legislative body not admissible.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54961	Use of Facility Allowing Discrimination; Applicability to Local Agencies • No meeting can be conducted in facility which prohibits admittance based on race, creed, color, national origin, ancestry, or sex.	54961	Use of Facility Allowing Discrimination; Applicability to Local Agencies • Adds "inaccessible to disabled persons, or where members of public may not be present without making a payment or purchase" as prohibited items.
54962	Closed Session by Legislative Body Prohibited • Closed sessions are prohibited except as permitted under Brown Act or Health and Safety Code sections relating to hospitals.	54962	Closed Session by Legislative Body Prohibited • Adds additional sections re hospitals and Education Code sections re school districts/community college districts.

Appendix D

Redlined Version of The 1994 Brown Act

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League of California Cities

California Cities Work Together

The 1994 Ralph M. Brown Act

January 1994
(Reflecting Changes Made by
AB 1426, SB 36, SB 376 and SB 1140)

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GENERAL EXPLANATORY COMMENTS

Text Conventions

As a general matter, redlining indicates additions to the existing language of the Brown Act; ~~strikeouts~~ indicate deletions of language. In a few instances, inconsistent changes are indicated with *italicized* language and a note below the section text.

Resolving Inconsistencies Among Bills

Generally speaking, in the absence of any express provision to the contrary in the statute which is enacted last, a conclusive presumption exists the legislature intended a later-enacted (higher chapter number) statute to prevail over statutes which are enacted earlier (lower chapter) at the same session. See Cal. Gov't Code § 9605. The Governor signed AB 1426 first (making it chapter 1136 of the Statutes of 1993), then SB 36 (making it chapter 1137) and then SB 1140 (making it chapter 1138). SB 376 is chapter 1194 of the Statutes of 1993.

Thus SB 36 prevails over inconsistencies with AB 1426, SB 1140 prevails over inconsistencies with both SB 36 and AB 1426. Readers should be aware, however, the inconsistencies were, in most if not all cases, unintended and areas in which there are inconsistencies are likely to be the subject of clean-up legislation in January of 1994. Because of this, these inconsistencies have been left in this document (usually marked with italics or brackets), so readers may anticipate areas which may be the subject of clean-up legislation.

Effective Dates

Changes made by AB 1426, SB 36, and SB 1140 are operative on April 1, 1994.[1] Changes made by SB 376 are effective immediately, inasmuch as SB 376 was an urgency measure.[2] In addition to being effective immediately, the changes made to the law by SB 376 are declaratory of existing law. See SB 376, § 27.

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[1] See SB 36, § 23, SB 1140, § 12, AB 1426, § 23.

[2] See SB 376, § 29.

Getting the Real Thing

Copies of these bills are available through CITYLINK, the League's online legislative service. Copies are also available from the legislative bill room (916/445-2323). West's and Deering's also publish commercial legislative services showing, by chapter number, legislation enacted in a given year. Most county law libraries subscribe to one of these services.

THE RALPH M. BROWN ACT[3]

54950. Declaration of intent; sovereignty

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

54950.5. Short title

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

54951. Local agency, definition

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.

~~54951.1. Local agency; private nonprofit organizations included~~

~~For the purposes of this chapter, and to the extent not inconsistent with federal law, the term "local agency" shall include all private nonprofit organizations that receive public money to be expended for public purposes pursuant to the "Economic Opportunity Act of 1964" (P.L. 88-452; 78 Stat. 508).~~

(Repealed by SB 1140)

[3] All section references are to the Government Code, unless otherwise indicated.

~~54951.7. Local agency as including nonprofit corporation appointed by local agency to acquire, construct, maintain or operate public work project~~

~~"Local agency" includes any nonprofit corporation, created by one or more local agencies, any one of the members of whose board of directors is appointed by such local agencies and which is formed to acquire, construct, reconstruct, maintain or operate any public work project.~~

(Repealed by SB 1140)

54952. Legislative body, definition

~~As used in this chapter, "legislative body" means the governing board, commission, directors or body of a local agency, or any board or commission thereof, and shall include any board, commission, committee, or other body on which officers of a local agency serve in their official capacity as members and which is supported in whole or in part by funds provided by such agency, whether such board, commission, committee or other body is organized and operated by such local agency or by a private corporation.~~

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

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

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body 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) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(1) 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.

(2) 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 by the legislative body of the local agency.

(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.

(Amended by SB 1140)

54952.1. Member of a legislative body, definition

As used in this chapter, "member of a legislative body of a local agency" includes, but is not limited to, any person elected to serve as a member of a legislative body who has not yet assumed the duties of office. That person 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.

(Added by SB 36)

~~**54952.2. "Legislative body" as including body with delegated authority**~~

~~As used in this chapter, "legislative body" also means any board, commission, committee, or similar multimember body which exercises any authority of a legislative body of a local agency delegated to it by that legislative body.~~

(Repealed by SB 1140)

54952.2. Meeting, definition

(a) As used in this chapter, "meeting" includes all of the following:

(1) Any congregation of a majority of the members of a legislative body in 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.

(2) 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.

(b) Nothing in subdivision (a) shall impose the requirements of this chapter upon any of the following:

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

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

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members 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.

(Added by SB 36 and AB 1426)

Note: Because of the order in which the bills were signed, there is some controversy as to whether the repealer in SB 1140 repealed the "new" section 54952.2 added by SB 36 and AB 1426 (adding a new definition of the term "meeting"). Legislative counsel reportedly takes the position the new definition of meeting should go in effect. In any event, this controversy is likely to be resolved by clean-up legislation.

~~54952.3. "Legislative body" as including advisory bodies~~

~~As used in this chapter "legislative body" also includes any advisory commission, advisory committee or advisory body of a local agency, created by charter, ordinance, resolution, or by any similar formal action of a legislative body or member of a legislative body of a local agency.~~

~~Meetings of such advisory commissions, committees or bodies concerning subjects which do not require an examination of facts and data outside the territory of the local agency shall be held within the territory of the local agency and shall be open and public, and notice thereof must be delivered personally or by mail at least 24 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting.~~

~~If the advisory commission, committee or body elects to provide for the holding of regular meetings, it shall provide by bylaws, or by whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. No other notice of regular meetings is required.~~

~~"Legislative body" as defined in this section does not include a committee composed solely of members of the governing body of a local agency which are less than a quorum of such governing body.~~

~~The provisions of Sections 54954, 54955, 54955.1, and 54956 shall not apply to meetings under this section.~~

(Repealed by SB 1140)

~~54952.5. Legislative body as including permanent boards or commissions of local agencies~~

~~As used in this chapter, "legislative body" also includes, but is not limited to, planning commissions, library boards, recreation commissions, and other permanent boards or commissions of a local agency.~~

(Repealed by SB 1140)

54952.6. Action taken, definition

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

54952.7. Copies of chapter to members of legislative body of local agencies

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.

(Amended by SB 1140, SB 36 and AB 1426)

54953. Meetings to be open and public; attendance; video teleconferencing; ~~duration of section (in effect until January 1, 1994)~~ secret ballots

~~*Text of section operative until Jan. 1, 1994.*~~

(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, except as otherwise provided in this chapter.

(b) Notwithstanding any other provision of law, the legislative body of a local agency may use video teleconferencing for the benefit of the public or the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The use of video teleconferencing, as authorized by this chapter, shall be limited to the receipt of public comment or testimony by the legislative body and to deliberations of the legislative body. If the legislative body of a local agency elects to use video teleconferencing, it shall post agendas at all video teleconference locations and adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or the public appearing before the legislative body of a local agency. The term "video teleconference" shall mean a system which provides for both audio and visual participation between all members of the legislative body and the public attending a meeting or hearing at any video teleconference location.

~~This section shall remain in effect until January 1, 1994, and on that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1994, deletes or extends that date.~~

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

(Amended by SB 36 and AB 1426)

Note: AB 1426 does not add the language in subdivision (c) relating to secret ballots. Since SB 36 was chaptered after AB 1426, the language is presently in the new law.

~~**54953. Meetings to be open and public; attendance; operative date of section (in effect January 1, 1994).**~~

~~*Text of section operative Jan. 1, 1994.*~~

~~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.~~

~~This section shall become operative January 1, 1994.~~

(Repealed by SB 36)

54953.1. Testimony of members before grand jury

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

54953.3. Conditions to attendance

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

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

54953.5. Recording of meetings

(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 ~~on a tape recorder~~ with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding ~~of~~ by the legislative body of the local agency that ~~such~~ the recording cannot continue without noise, illumination, or obstruction of a view that constitutes, or would constitute, a disruption of the proceedings.

(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 tape recorder made available by the local agency.

(Amended by SB 36 and AB 1426)

54953.6. Broadcast of proceedings

No legislative body shall prohibit or otherwise restrict the broadcast of its proceedings 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.

(Added by SB 36 and AB 1426)

54953.7. Allowance of greater access to meetings than minimal standards in this chapter

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

54954. Time and place of regular meetings; holidays; emergencies

(a) The legislative body of a local agency shall provide, by ordinance, resolution, by-laws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. ~~Unless otherwise provided for in the act under which the local agency was formed, meetings of the legislative body need not be held within the boundaries of the territory over which the local agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day.~~

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

(1) Otherwise comply with the state or federal law or court order.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction.

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

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

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

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

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do either 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 ~~may~~ shall be held for the duration of the emergency at ~~such~~ the place ~~as is~~ 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.

(Amended by SB 36 and AB 1426)

54954.1. Mailed notice to persons who filed written request; time; duration and renewal of requests; fee

The legislative body which is subject to the provisions of this chapter shall give mailed notice of every regular meeting, and any special meeting which is called at least one week prior to the date set for the meeting, to any person who has filed a written request for that notice with the legislative body. Any mailed notice required pursuant to this section shall be mailed at least one week prior to the date set for the meeting to which it applies except that the legislative body may give the notice as it deems practical of special meetings called less than seven days prior to the date set for the meeting.

Any request for notice filed pursuant to this section shall be valid for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for notice shall be filed within 90 days after January 1 of each year.

The failure of any person to receive the notice given pursuant to this section shall not constitute grounds for any court to invalidate the actions of the legislative body for which the notice was given.

The legislative body may establish a reasonable annual fee for sending the notice based on the estimated cost of providing the service.

54954.2. Agenda posting; action on other matters

(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.

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

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the ~~following conditions:~~ 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 legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a ~~the~~ need to take immediate action and that the need for action came to the attention of the local agency ~~arose~~ 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.

(Amended by SB 36 and AB 1426)

54954.3. Opportunity for public to address legislative body; adoption of regulations

(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, ~~in the case of a meeting of a city council in a city or a board of supervisors in a city and county,~~ the agenda need not provide an opportunity for members of the public to address the ~~council or board~~ legislative body on any item that has already been considered by a committee, composed exclusively of members of the ~~council or board~~ 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 ~~council or board~~ legislative body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the legislative body concerning that item prior to action on that item.

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

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency or 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.

(Amended by SB 36 and AB 1426)

54954.4. Reimbursements to local agencies and school districts for costs

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

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

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

54954.5 Closed session agenda descriptions

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

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session held pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

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

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

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

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

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

or

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

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

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

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release)

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

CONFERENCE WITH LABOR NEGOTIATOR

Agency negotiator: (Specify name)

Employee organization: (Specify name of organization representing employee)

or

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

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(h) With respect to every item of business discussed in closed session pursuant to Section 54962 and Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

(Added by SB 36 and AB 1426)

54954.6 New or increased taxes or assessments; hearings; notice

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

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

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

(B) A service charge or benefit charge, unless a special district's principal act requires service charges or benefit charges 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 which does not exceed an assessment formula or range of assessments 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 ~~paragraph (2) of~~ subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision

(a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting 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.

~~(D)~~ (E) The dates, times, and locations of the public hearings described in subdivision (a).

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

(c)(1) The notice of the public hearing required by ~~paragraph (2) of~~ 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 of 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 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 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.

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

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

(3) Notwithstanding paragraph (1), in the case of an assessment which is proposed exclusively for operation and maintenance expenses for an entire city, county, or district, or operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to paragraph (1) of subdivision (b) and shall include the information required by 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) ~~Subdivisions (b) and (c)~~ This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of ~~the property owners or registered voters subject to the proposed general tax or assessment.~~ either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the city, county, special district, or joint powers authority 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 ~~the~~ 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.

(Amended by SB 376, an urgency measure)

54955. Adjournment; adjourned meetings

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

54955.1. Continuance

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

54956. Special meetings; call; notice

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 personally or by mail written notice to each member of the legislative body and to each local newspaper of general circulation, radio or television station requesting notice in writing. The notice shall be delivered personally or by mail 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. 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. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.

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.

54956.5. Emergency meetings in emergency situations

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.

54956.6. Fees

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

54956.7. Closed sessions; license applications; rehabilitated criminals

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the

legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

54956.8. Real property transactions; closed meeting with negotiator

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

For the purpose of this section, the negotiator may be a member of the legislative body of the local agency.

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

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

54956.9. Pending litigation; closed session; abrogation of privilege; notice; memorandum

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 expression 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:

(a) ~~An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator~~ Litigation, to which the local agency is a party, has been initiated formally.

(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.

(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.

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 agency but which the 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 *made* on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous record or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The 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).

(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 ~~publicly to which subdivision it is pursuant~~ 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 a significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

~~The legal counsel of the legislative body of the local agency shall prepare and submit to the body a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subdivision (a), the memorandum shall include the title of the litigation. If the closed session is pursuant to subdivision (b) or (c), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the body prior to the closed session if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.1.~~

~~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.~~

(Amended by SB 36 and AB 1426)

Note: The language in italics indicates language in AB 1426 which was not in SB 36. Since SB 36 was chaptered later, the language is presently not in the new law.

54956.95. Closed sessions; insurance pooling; tort liability losses; public liability losses; workers' compensation liability

(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.

54957. Closed sessions; threat to public services; personnel matters; exclusion of witnesses; "employee" defined; discussion of budget priorities

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, or dismissal of a public employee or to hear complaints or charges brought against ~~such~~ the employee by another person or employee unless ~~such~~ the employee requests a public ~~hearing~~ session. As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice 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 ~~any such~~ that public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

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 discussions of a local agency's available funds, funding priorities, or budget.

~~For the purposes of this section, the term "employee" shall not include any person elected to office, or appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.~~

~~Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding closed sessions to consider (a) matters affecting the national security, or (b) the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Such body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.~~

(Amended by SB 36 and AB 1426)

54957.1. Closed sessions; public report of action taken

(a) The legislative body of any local agency shall publicly report ~~at the public meeting during which the closed session is held or at its next public meeting any action taken, and any roll call vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the legislative body.~~ any action taken in closed session and the vote or abstention of every member present thereon, as follows:

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

(2) Approval given to the body's 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 other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize its 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 the body's 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 body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

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

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

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

(6) Approval of an agreement concluding labor negotiations 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.

(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.

(Amended by SB 36 and AB 1426)

Note: The punctuation in brackets is punctuation in AB 1426 but not in SB 36. Since SB 36 was chaptered after AB 1426, the punctuation is missing from the new law.

54957.2. Minute book record of closed sessions; inspection

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

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

54957.5. Agendas and other writings distributed for discussion or consideration at public meetings; public records; inspection; closed sessions

(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 ~~a member, officer, employee, or agent of such body for~~ any person in connection with a matter subject to discussion or consideration at a public meeting of ~~such~~ the body, are public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) ~~as soon as distributed~~, and shall be made available pursuant to Sections 6253 and 6256 without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, or 6254.7.

~~(b) Writings which are public records under subdivision (a) and which are distributed prior to commencement of a public meeting shall be made available for public inspection upon request prior to commencement of such meeting.~~

(c) Writings which are public records under subdivision (a) and which 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) Writings which are public records under subdivision (a) and which are distributed during a public meeting and prior to commencement of their discussion at such meeting shall be made available for public inspection prior to commencement of, and during, their discussion at such meeting.~~

~~(d) Writings which are public records under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.~~

~~(e)~~ (d) Nothing in this section 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.

(e) This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under ~~The writings described in subdivisions (b), (c), and (d) are subject to~~ the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1) ~~and subdivisions (b), (c), and (d) shall not be construed to exempt from public inspection any record covered by that act, or to limit the public's right to inspect any record required to be disclosed by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a legislative body of the local agency.~~ Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

~~(f) "Writing" for purposes of this section means "writing" as defined under Section 6252.~~

(Amended by SB 36 and AB 1426)

Note: Language in italics is language added by SB 36 but not added by AB 1426. Since SB 36 was chaptered after AB 1426, the italicized language is in the new law.

54957.6. Closed sessions; legislative body of local agencies; salaries, salary schedules or fringe benefits; mandatory subjects; "employee" defined; discussion of budget priorities

(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. 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.

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) In addition to the closed sessions authorized by subdivision (a), the legislative body, as defined by Sections 54952, 54952.2, 54952.3, and 54952.5, of a public agency, as defined by subdivision (c) of Section 3501, may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.~~

(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.

Closed sessions held pursuant to this section shall not include discussions of a local agency's available funds, funding priorities, or budget.

(Amended by SB 1140)

54957.7. Closed sessions; disclosure of items to be discussed; notice

(a) Prior to ~~or after~~ holding any closed session, the legislative body of the local agency shall ~~state the general reason or reasons for the closed session, and may cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the legislative body may consider only those matters covered in its statement. In the case of special, adjourned, and continued meetings, the statement shall be made as part of the notice provided for the special, adjourned, or continued meeting. Nothing in this section shall require or authorize the giving of names or other information which would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session.~~ 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.

(Amended by SB 36 and AB 1426)

54957.8. Closed sessions; legislative body of a multijurisdictional drug law enforcement agency

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.

54957.9. Disorderly conduct during meeting; clearing of room

In the event that any meeting is wilfully 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 wilfully 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 wilfully disturbing the orderly conduct of the meeting.

54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local

agency notwithstanding the conflicting provisions of any other state law.

54959. Penalty for unlawful meeting

Each member of a legislative body who attends a meeting of ~~such~~ that legislative body where action is taken in violation of any provision of this chapter, with ~~knowledge of the fact that the meeting is in violation thereof~~ wrongful intent to deprive the public of information to which it is entitled under this chapter, is guilty of a misdemeanor.

(Amended by SB 36 and AB 1426)

54960. Action to prevent violations or determine applicability of chapter

(a) The district attorney or a~~A~~ny 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 the validity under the laws of this state or of the United States of any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members, 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 Sections 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 entity 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.

(c) 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.

(Amended by SB 36 and AB 1426)

54960.1. Unlawful action by legislative body; action for mandamus or injunction; prerequisites

(a) The district attorney or a~~A~~ny 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.

The written demand shall be made within ~~30~~ 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. 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. 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. 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, ~~or not to cure or correct, within 15 days of or within 75 days from the date the challenged action was taken,~~ 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.

(c) An action taken that is alleged to have been taken in violation of Sections 54953, 54954.2, 54954.5, 54954.6, and 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.

(d) 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.

(e) 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.

(Amended by SB 36 and AB 1426)

54960.5. Costs and attorney fees

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.

54961. Use of facility allowing discrimination; applicability to local agencies

(a) No legislative body or a local agency shall conduct any meeting~~, conference, or other function~~ 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~~, 54951.1, or 54951.7~~.

(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.

(Amended by SB 1140, AB 1426 and SB 36)

Note: Amendments made in SB 36 and AB 1426 which were not made in SB 1140 are identified by italics. Since SB 1140 was chaptered last, the italicized language is presently not in the new law.

54962. Closed session by legislative body prohibited

Except as expressly authorized by this chapter, or by Sections *1461,* 32106 and 32155 of the Health and Safety Code *or Sections 37606 and 37624.3 of the Government Code* as they apply to hospitals ~~*districts*~~, 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.

(Amended by SB 1140 and SB 36)

Note: Amendments made in SB 36 and AB 1426 which were not made in SB 1140 are identified by italics. Since SB 1140 was chaptered last, the italicized language is presently not in the new law.

Note on Other Code Sections Affected by SB 1140, SB 36, and AB 1426

SB 1140 amended section 35145.5 of the Education Code, repealed section 36808 of the Government Code.

SB 36 added section 1461 to the Health and Safety Code, as did AB 1426.

AB 1426 added a section 54925.1 to the Government Code, which appears to contain a typographical error in the section number (the number should be 54952.1.). However, this language duplicates the language in SB 36 which did indeed add a section 54952.1 to the Brown Act.

Note on Other Code Sections Affected by SB 376

SB 376 also made changes to the following: section 50078.6 of the Government Code (amended); section 61712 of the Government Code (amended); section 2291.2 of the Health and Safety Code (amended); sections 2850, 2853, 5194, 9527, 10301, 11302, 18070, 18343, 18663, 22090, 22526, 22556, 22588, 22590, 22624, 22626, 22629, 22630.5, 22631, 36523, and 36523.5 of the Streets and Highways Code (amended); section 11300 of the Streets and Highways Code (repealed). SB 376 is an urgency measure, which means these changes are effective immediately.

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Appendix E

Public Records Act Text

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League of California Cities

California Cities Work Together

The 1994 Public Records Act

January 1994

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THE PUBLIC RECORDS ACT[1]

6250. Legislative findings and declarations

In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. Short title

This chapter shall be known and may be cited as the California Public Records Act.

6252. Definitions

As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit organizations of local governmental agencies and officials which are supported solely by public funds.

(c) "Person" includes any natural person, corporation, partnership, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

[1] All section references are to the Government Code, unless otherwise indicated.

(e) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(f) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

6253. Public records open to inspection; time; guidelines and regulations governing procedure

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.
The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles
Department of Consumer Affairs
Department of Transportation
Department of Real Estate
Department of Corrections
Department of the Youth Authority
Department of Justice
Department of Insurance
Department of Corporations
Secretary of State
State Air Resources Board
Department of Water Resources
Department of Parks and Recreation
San Francisco Bay Conservation and Development Commission
State Board of Equalization
State Department of Health Services
Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development

Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Quality Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Quality Management District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in subdivision (a).

6253.1. Adoption of requirements for greater access

Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.

6253.5. Initiative, referendum, recall petitions, and petitions for reorganization of school districts or community college districts deemed not public records; examination by proponents

Notwithstanding the provisions of Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county clerks in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the

proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor; provided, however, that the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the clerk.

(3) For recall measures, the person or persons defined in Section 29711 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

6253.6. Bilingual ballot or ballot pamphlet requests not deemed public records

(a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

6254. Exemption of particular records

Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files which reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name, current address, and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the

individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name, age, and current address of the victim, except that the address of the victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 261, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1, Chapter 10.5 (commencing with Section 3525) of Division 4 of Title 1, and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, which reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or which provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under the above chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, which reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or which provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services which is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until such time as a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals which has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, which relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department which indicates when or where the applicant is vulnerable to attack or which concerns the applicant's medical or psychological history or that of members of his or her family.

(v)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and which reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2)(A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w)(1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

6254.1. Disclosure of residence, mailing address or results of test for competency to safely operate motor vehicle

(a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

6254.2. Pesticide safety and efficacy information; public disclosure; limitations; procedures

(a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an

employee or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Food and Agriculture, upon his or her initiative, or upon receipt of a request pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to the California Public Records Act of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The Director of Food and Agriculture shall not knowingly disclose information submitted by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any employee or

agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in other countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to this disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests information pursuant to this section:

AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted by an applicant or registrant under the California Food and Agricultural Code. I hereby affirm all of the following:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in other countries in addition to the United States, or to the agents or employees of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to such a business or entity or its agents or employees.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name	Organization
Signature	
Date Request No.	Address
Client, if you are requesting access on behalf of someone other than the organization or affiliation listed above.	

(i) Notwithstanding any other provision of this section, the Director of Food and Agriculture may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.
For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

6254.3. State employee and school district employee home address and phone number as public records; disclosure

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(1) To an agent, or a family member of the individual to whom the information pertains.

(2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

6254.4. Voter registration information; confidentiality

(a) The home address, telephone number, occupation, precinct number, and prior registration information shown on the voter registration card for the following persons is confidential if the person requests confidentiality of that information at the time of registration or reregistration and shall not be disclosed to any person except pursuant to Section 615 of the Elections Code:

(1) Any active or retired judge, magistrate, or court commissioner.

(2) Any active or retired district attorney, assistant district attorney, or deputy district attorney.

(3) Any active or retired public defender or assistant public defender or public defender investigator.

(4) Any active or retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code.

(5) The spouse or children of any person included in paragraphs (1) to (4), inclusive, who are living with that person.

(b) Confidentiality granted under this section shall apply only to records prepared or generated on or after the date that the voter is granted confidentiality.

(c) A person who requests confidentiality of the information specified in subdivision (a) shall register or reregister to vote by means of a confidential affidavit of registration form which shall be prescribed by the Secretary of State and which shall be attested to under penalty of perjury by the affiant that he or she is a person entitled to confidential treatment pursuant to this section.

(d) For purposes of this section, "home address" means only street address and does not include an individual's city or post office address.

6254.5. Disclosures of public record; waivers of exemption; agency; inapplicability of section

Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.
This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department of Corporations.

6254.6. Private industry wage data from federal bureau of labor statistics; identity of employers; confidentiality

Whenever a city and county or a joint powers agency, pursuant to a mandatory statute or charter provision to collect private industry wage data for salary setting purposes, or a contract entered to implement that mandate, is provided this data by the federal Bureau of Labor Statistics on the basis that the identity of private industry employers shall remain confidential, the identity of the employers shall not be open to the public or be admitted as evidence in any action or special proceeding.

6254.7. Air pollution data; public records; notices and orders to building owners; trade secrets; data used to calculate costs of obtaining emission offsets

(a) All information, analyses, plans, or specifications that disclose the nature, extent, quantity, or degree of air contaminants or other pollution which any article, machine, equipment, or other contrivance will produce, which any air pollution control district or air quality management district, or any other state or local agency or district, requires any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, are public records.

(b) All air or other pollution monitoring data, including data compiled from stationary sources, are public records.

(c) All records of notices and orders directed to the owner of any building of violations of housing or building codes, ordinances, statutes, or regulations which constitute violations of standards provided in Section 1941.1 of the Civil Code, and records of subsequent action with respect to those notices and orders, are public records.

(d) Except as otherwise provided in subdivision (e) and Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code, trade secrets are not public records under this section. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(e) Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records. Data used to calculate emission data are not emission data for the purposes of this subdivision and data which constitute trade secrets and which are used to calculate emission data are not public records.

(f) Data used to calculate the costs of obtaining emissions offsets are not public records. At the time that an air pollution control district or air quality management district issues a permit to construct to an applicant who is required to obtain offsets pursuant to district rules and regulations, data obtained from the applicant consisting of the year the offset transaction occurred, the amount of offsets purchased, by pollutant, and the total cost, by pollutant, of the offsets purchased is a public record. If an application is denied, the data shall not be a public record.

6254.8. Employment contracts between state or local agency and public official or employee; public record

Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 and 6255.

6254.9. Computer software; status as public record; sale, lease, or license authorized; limitations

(a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

6254.10. Disclosure of archeological site information not required

Nothing in this chapter requires disclosure of records that relate to archeological site information maintained by the Department of Parks and Recreation , the State Historical Resources Commission, or the State Lands Commission.

6254.11. Volatile organic compounds or chemical substances information

Nothing in this chapter requires the disclosure of records that relate to volatile organic compounds or chemical substances information received or compiled by an air pollution control officer pursuant to Section 42303.2 of the Health and Safety Code.

6254.12. Broker-dealer license information; disciplinary records

Any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository and compiled as disciplinary records which are made available to the Department of Corporations through a computer system, shall constitute a public record. Notwithstanding any other provision of law, the Department of Corporations may disclose that information and the current license status and the year of issuance of the license of a broker-dealer upon written or oral request pursuant to Section 25247 of the Corporations Code.

6254.25. Memorandum from legal counsel to state body or local agency; pending litigation

Nothing in this chapter or any other provision of law shall require the disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel pursuant to subdivision (q) of Section 11126 or Section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudicated or otherwise settled.

6255. Justification for withholding of records

The agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

6256. Copies of records; determination on compliance with request; notice; reasons

Any person may receive a copy of any identifiable public record or copy thereof. Upon request, an exact copy shall be provided unless impracticable to do so. Computer data shall be provided in a form determined by the agency.

Each agency, upon any request for a copy of records shall determine within 10 days after the receipt of such request whether to comply with the request and shall immediately notify the person making the request of such determination and the reasons therefor.

6256.1. Extension of time for determination in unusual circumstances; notice

In unusual circumstances, as specified in this section, the time limit prescribed in Section 6256 may be extended by written notice by the head of the agency to the person making the request setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than 10 working days.
As used in this section "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request.

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

6256.2. Delay in access; prohibition; notification of denial; name of person responsible

Nothing in this chapter shall be construed to permit an agency to delay access for purposes of inspecting public records. Any notification of denial of any request for records shall set forth the names and titles or positions of each person responsible for the denial.

6257. Request for copy; prompt availability; fee; reasonably segregable portion after deletion of exempt portions

Except with respect to public records exempt by express provisions of law from disclosure, each state or local agency, upon any request for a copy of records, which reasonably describes an identifiable record, or information produced therefrom, shall make the records promptly available to any person, upon payment of fees covering direct costs of duplication, or a statutory fee, if applicable. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law.

6258. Proceedings to enforce right to inspect or to receive copy of record

Any person may institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. The times for responsive pleadings and for hearings in these proceedings shall be set by the judge of the court with the object of securing a decision as to these matters at the earliest possible time.

6259. Order of court; review; contempt; court costs and attorney fees

(a) Whenever it is made to appear by verified petition to the superior court of the county where the records or some part thereof are situated that certain public records are being improperly withheld from a member of the public, the court shall order the officer or person charged with withholding the records to disclose the public record or show cause why he or she should not do so. The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.

(b) If the court finds that the public official's decision to refuse disclosure is not justified under Section 6254 or 6255, he or she shall order the public official to make the record public. If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.

(c) In an action filed on or after January 1, 1991, an order of the court, either directing disclosure by a public official or supporting the decision of the public official refusing disclosure, is not a final judgment or order within the meaning of Section 904.1 of the Code of Civil Procedure from which an appeal may be taken, but shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ. Upon entry of any order pursuant to this section, a party shall, in order to obtain review of the order, file a petition within 20 days after service upon him or her of a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the notice is served by mail, the period within which to file the petition shall be increased by five days. A stay of an order or judgment shall not be granted unless the petitioning party demonstrates it will otherwise sustain irreparable damage and probable success on the merits. Any person who fails to obey the order of the court shall be cited to show cause why he or she is not in contempt of court.

(d) The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the public agency of which the public official is a member or employee and shall not become a personal liability of the public official. If the court finds that the plaintiff's case is clearly frivolous, it shall award court costs and reasonable attorney fees to the public agency.

6260. Effect of chapter on prior rights and proceedings

The provisions of this chapter shall not be deemed in any manner to affect the status of judicial records as it existed immediately prior to the effective date of this section, nor to affect the rights of litigants, including parties to administrative proceedings, under the laws of discovery of this state, nor to limit or impair any rights of discovery in a criminal case.

6261. Itemized statement of total expenditures and disbursement of any agency

Notwithstanding Section 6252, an itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection.

6262. Exemption of records of complaints to, or investigations by, any state or local agency for licensing purposes; inapplicability to district attorney

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under subdivision (f) of Section 6254 shall not apply when a request for inspection of such records is made by a district attorney.

6263. District attorney; inspection or copying of nonexempt public records

A state or local agency shall allow an inspection or copying of any public record or class of public records not exempted by this chapter when requested by a district attorney.

6264. Order to allow district attorney to inspect or copy records

The district attorney may petition a court of competent jurisdiction to require a state or local agency to allow him to inspect or receive a copy of any public record or class of public records not exempted by this chapter when the agency fails or refuses to allow inspection or copying within 10 working days of a request. The court may require a public agency to permit inspection or copying by the district attorney unless the public interest or good cause in withholding such records clearly outweighs the public interest in disclosure.

6265. Disclosure of records to district attorney; status of records

Disclosure of records to a district attorney under the provisions of this chapter shall effect no change in the status of the records under any other provision of law.

6267. Libraries supported by public funds; registration and circulation records; confidentiality; exceptions

All registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency except as follows:

(a) By a person acting within the scope of his or her duties within the administration of the library.

(b) By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.

(c) By order of the appropriate superior court.

As used in this section, the term "registration records" includes any information which a library requires a patron to provide in order to become eligible to borrow books and other materials, and the term "circulation records" includes any information which identifies the patrons borrowing particular books and other material.

This section shall not apply to statistical reports of registration and circulation nor to records of fines collected by the library.

6268. Public records in custody or control of governor leaving office; transfer to state archives; restriction of public access; conditions

Public records, as defined in Section 6252, in the custody or control of the Governor when he or she leaves office, either voluntarily or involuntarily, shall, as soon as is practical, be transferred to the State Archives. Notwithstanding any other provision of law, the Governor, by written instrument, the terms of which shall be made public, may restrict public access to any of the transferred public records, or any other writings he or she may transfer, which have not already been made accessible to the public. With respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later, nor shall there be any restriction whatsoever with respect to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition in cases which have been closed for a period of at least 25 years. Subject to any restrictions permitted by this section, the Secretary of State, as custodian of the State

Archives, shall make all such public records and other writings available to the public as otherwise provided for in this chapter.

Except as to enrolled bill files, press releases, speech files, or writings relating to applications for clemency or extradition, this section shall not apply to public records or other writings in the direct custody or control of any Governor who held office between 1974 and 1988 at the time of leaving office, except to the extent that that Governor may voluntarily transfer those records or other writings to the State Archives.

Notwithstanding any other provision of law, the public records and other writings of any Governor who held office between 1974 and 1988 may be transferred to any educational or research institution in California provided that with respect to public records, public access, as otherwise provided for by this chapter, shall not be restricted for a period greater than 50 years or the death of the Governor, whichever is later. No records or writings may be transferred pursuant to this paragraph unless the institution receiving them agrees to maintain, and does maintain, the materials according to commonly accepted archival standards. No public records transferred shall be destroyed by that institution without first receiving the written approval of the Secretary of State, as custodian of the State Archives, who may require that the records be placed in the State Archives rather than being destroyed. An institution receiving those records or writings shall allow the Secretary of State, as custodian of the State Archives, to copy, at state expense, and to make available to the public, any and all public records, and inventories, indices, or finding aids relating to those records, which the institution makes available to the public generally. Copies of those records in the custody of the State Archives shall be given the same legal effect as is given to the originals.

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Appendix F

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Sacramento Newspaper Guild v. City of Sacramento, 263 Cal. App. 2d 41, 69 Cal. Rptr. 480 (1968) 20
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Appendix G

Speakers' Biographies

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PETER N. BROWN

PETER N. BROWN is a partner in the law firm of Hatch & Parent, Santa Barbara, which represents a broad range of public agencies as general and special counsel. Mr. Brown received his B.A. degree with honors from Amherst College in 1968, and his J.D. degree from the University of Southern California Law Center in 1975, where he served as note and article editor on the Southern California Law Review.

MR. BROWN served as Deputy City Attorney for the City of Carpinteria from 1985 to 1990, as Chief Deputy City Attorney from 1990 to 1992, and as City Attorney since 1992. He has also provided legal services for the Central Coast Water Authority and the Cities of Arroyo Grande and Westlake Village. He is a member of the League of California Cities Legal Advocacy Committee, and serves on the Ad Hoc Brown Act Committee which the League formed in 1992. He is the author of the amicus brief filed on behalf of over 170 California cities in Freedom Newspapers v. Board of Directors of Orange County Employees Retirement System.

MR. BROWN is married and has two children.

RESUME OF

LELAND C. DOLLEY

Mr. Dolley has served as the City Attorney of Alhambra for over seventeen years and as the City Attorney of El Segundo for over ten years, and as General Counsel for the Alhambra Redevelopment Agency. Mr. Dolley, who is a former Deputy District Attorney of Los Angeles County and the former City Attorney of the Cities of Bradbury and Lomita, has concentrated his practice in the fields of municipal law and administrative law. He has special expertise in land use, environmental matters, redevelopment matters, municipal finance, the Political Reform Act and the Brown Act. He has served as Special Counsel to the Contract Cities Association and the Independent Cities Association, and as Special Counsel for many other cities with respect to general municipal and litigation matters. He has served as Chairperson of the Los Angeles County Bar Association-Governmental Law Section, as President of the City Attorneys Association of Los Angeles County, as Chairperson of the American Bar Association Airport Law Committee and as a member of the governing board of the Urban Law Section of the American Bar Association. Mr. Dolley is a partner in the law firm of Burke, Williams & Sorensen.

Admitted to the California Bar in 1968, he holds an A.B. from the University of Southern California and a J.D. from the University of San Diego.

BIOGRAPHICAL STATEMENT
OF
JOHN F. WILSON

Graduate of Southwestern School of Law, Los Angles, California in 1981. From October, 1990 to present, City Attorney for the City of Banning, California. From June, 1984 through October, 1990, Senior Deputy City Attorney for the City of San Bernardino.

RESUME

JAYNE W. WILLIAMS
505 14th Street, 12th Floor
Oakland, CA 94612
Tel: (510) 238-3812

Jayne W. Williams was appointed Oakland's City Attorney in 1987. She began her tenure with the City Attorney's Office in 1974, specializing in housing and redevelopment. She served as the City's Director of Personnel from 1978-1980. Thereafter, she returned to the City Attorney's Office and was appointed Assistant City Attorney responsible for the management of the litigation division of the office. Ms. Williams received her J.D. from Hastings College of Law in 1974.

Ms. Williams is a contributing editor for the CEB Land Use Forum. She is a member and past chair of the Executive Committee of the Public Law Section of the California State Bar and serves as a member of the State Bar's Commission on the Future of the State Bar and the Legal Profession. She is a recent appointee as a lawyer representative to the Ninth Circuit Judicial Conference.
Ms. Williams is a recipient of several honors and awards, including the Mark of Excellence Award from the National Forum of Black Public Administrators, and the Loren Miller Award from the California Association of Black Lawyers.

Ms. Williams is married to Carl L. Williams, an attorney in private practice in San Francisco, and is the mother of two teenage children, Chad and Kelli.

BIOGRAPHY OF ARIEL PIERRE CALONNE

Mr. Calonne is a 1983 graduate of Hastings College of the Law. Mr. Calonne received his Bachelor of Arts degree from the University of California at Riverside with a major in biology.

After graduating from UC Riverside in 1979, Mr. Calonne worked in the California Department of Food & Agriculture's Environmental Monitoring Unit in Sacramento where he assisted in developing all CDFA's EIR in-lieu equivalent program and conducted air and water pesticide drift monitoring research.

In the summer of 1982, Mr. Calonne served as a law clerk with the Riverside law firm of Best, Best & Krieger. He joined Best, Best & Krieger as an associate in the fall of 1983. Mr. Calonne served as Assistant City Attorney for Corona, Redlands, Banning, Desert Hot Springs and Perris, with principal responsibility for the planning commissions of Banning and Desert Hot Springs.

In 1987, Mr. Calonne left private practice to join the City of San Buenaventura as a deputy city attorney where he specialized in land use and environmental matters. In July 1988, he was appointed to the position of assistant city attorney.

In October 1988, Mr. Calonne joined the Los Angeles law firm of Richards, Watson & Gershon where he served as Assistant City Attorney for the cities of Palmdale and Westlake Village. In May 1989, while an associate at Richards, Watson & Gershon, Mr. Calonne became City Attorney for the City of Rancho Palos Verdes.

In August 1990, Mr. Calonne left private practice to become the City Attorney for the City of Palo Alto. Mr. Calonne serves as legal advisor to the City's gas, electric and water utilities. He serves on the Northern California Power Agency's Legal Committee and appears regularly before the California Public Utilities Commission on natural gas transportation and rate making matters.

He has served as the Chairperson of the Land Use Planning Subsection of the Real Property Section of the Los Angeles County Bar Association and as a member and Vice-Chair of the City of Riverside's Environmental Protection Commission.

Mr. Calonne's publications include Goldsmith and Calonne, The California Public Trust Doctrine -- Unsettled Law, Unsettled Rights, (1986) 4 California Real Property Journal 13 and several papers presented to the League of California Cities. Mr. Calonne currently serves on the League of California Cities Legal Advocacy Committee as the Peninsula Division representative.

BIOGRAPHY OF THOMAS R. CURRY

Thomas R. Curry graduated from the University of California, Berkeley, with a B.A. in political science and received his J.D. degree from UC's Hastings College of the Law. He began his municipal law career in the City of Hayward as a Deputy City Attorney, later served as Assistant City Attorney of Walnut Creek, and since 1980 has been City Attorney of Livermore.

Mr. Curry has participated in and written for several seminars (State Bar of California, League of California Cities, California Continuing Education of the Bar, Practising Law Institute, Continuing Legal Education International, etc.) on such topics as conflicts of interest, initiatives, the general plan, Brown Act and regulatory takings.

EVERETT JENKINS

Everett Jenkins is an assistant city attorney with the City of Richmond. While with the Richmond City Attorney's Office, Everett's primary emphasis has been on environmental issues (i.e., solid and hazardous waste management) and responding to requests for disclosure of public (police) records. Everett is a 1975 graduate of Amherst College with a Bachelor of Arts degree in Political Science. He obtained a Juris Doctor degree from Boalt Hall (University of California at Berkeley) in 1978 and was admitted to the State Bar of California in 1979. Everett was on the Executive Committee of the Public Law Section from 1987 through 1991 and served as Editor of the Public Law News from 1988 through 1991. From 1991 through 1992, Everett acted as the liaison between the Public Law Section and the State Bar Board of Governors. He currently sits on the State Bar's Joint Advisory Committee on Continuing Education of the Bar.

Jimmy L. Gutierrez

Biography not available at print time.

BIOGRAPHY

JYLANA D. COLLINS

Jylana Collins is a Deputy City Attorney for the City of Berkeley City Attorney's Office, where she specializes in the areas of labor relations, employment law, privacy and first amendment issues, and Public Records Act requests. Ms. Collins graduated from Antioch University and earned her J.D. degree from the University of San Francisco.

Kathleen M. Weinheimer was recently appointed City Attorney of the City of Pismo Beach. She received a Bachelor of Science degree in Economics from the University of Santa Clara and a law degree from the University of the Pacific, McGeorge School of Law. Following graduation from McGeorge, Ms. Weinheimer served as staff counsel to the California Energy Commission in Sacramento, developing tax incentives for alternative energy. In 1985, she joined the City Attorney's office in Santa Barbara as Assistant City Attorney, where she served as primary counsel to the Planning Commission, the Architectural Board of Review, and related design review committees. During 1990-91, Ms. Weinheimer was lead counsel on the City of Santa Barbara's desalination project. In 1991, she accepted a position with the Santa Barbara firm of Schramm & Raddue, where she specialized in land use and municipal law, and served as Assistant City Attorney for the Cities of Solvang and Pismo Beach. In the fall of 1993, she formed her own firm and accepted the position of City Attorney for the City of Pismo Beach.

BIOGRAPHY OF STEPHANIE ATIGH

Stephanie Atigh has been the City Attorney of Salinas since July, 1988, and was the Salinas Assistant City Attorney from 1984 to 1988.

Prior to entering municipal law, Stephanie worked as a staff attorney and executive director of Legal Services of Cape Cod and the Islands (1980-84) and as a VISTA attorney and staff attorney for Community Legal Services of Santa Clara County (1975-1980).

Stephanie is a graduate of San Jose State University (1972) and University of Santa Clara School of Law (1975). In 1979, Stephanie received a fellowship from the National Endowment for the Humanities to study the subject of justice in the legal system with attorneys and judges from across the country.

KRAUEL, Roger W.
City Attorney: City of Coronado, City of Del Mar, City of Encinitas

EDUCATIONS	Degrees Received/ Years Attended
University of Southern California	BA cum laude (Pol. Sci.) 1962-1966
California Western School of Law	JD cum laude (Law) 1970-1973

PROFESSIONAL RESPONSIBILITIES:

Senior partner in the law firm of Krauel & Krauel; a law practice serving private clients and also serving as the City Attorney/General Counsel for eight local, governmental agencies with combined constituencies exceeding 100,000 persons and budgets exceeding 60 million dollars annually.

Partner is a past-chairperson of the San Diego Water Authority and a current Director of the Metropolitan Water District of Southern California with jurisdiction over Southern California water matters.

BROWN ACT REVISIONS
AB14261 / SB36 / SB1140

LEAGUE OF CALIFORNIA CITIES

City Attorneys Department
10/18/93

(Chart Does Not Include Unamended Sections - Changes Operative 4/1/94)

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54952, 54952.2, 5[illegible].3, 5[illegible].5	Legislative Body, Definitions • Governing Body. • Body exercising delegated authority. • Advisory Committees (LTAQ exception). • Permanent Boards and Commissions.	54952	Legislative Body, Definition • Governing Body. • Commissions/Committees. • "Standing" Advisory Committees with continuing subject matter jurisdiction or meeting schedule fixed by formal action. • Ad-hoc LTAQ exception? • Private Corporations created by or receiving funds from legislative body. • Hospital lessees.
		54952.1	Member of Legislative Body, Definition • Includes newly-elected member of legislative body.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
		54952.2	Meeting, Definition • Congregation of majority of members. • Direct communication/use of intermediaries/technology creating serial meeting. • Exceptions: a. Individual contacts between citizens and members; b. Conferences or gatherings dealing with issues of "General interest." No discussion of agency business by members permitted. c. Community meetings not organized by legislative body. No discussion of agency business by members permitted. d. Social gatherings. No discussion of agency business by members permitted.
54952.7	Copies of Brown Act to Members of Legislative Body of Local Agencies • Copies of Brown Act may be provided to Members	54952.7	Copies of Chapter to Members of Legislative Body of Local Agencies • Copies of Brown Act may be provided to Members and Newly-Elected Members.
54953	Public Meetings to be Open and Public • All meetings shall be open and public.	54953	Meetings to be Open and Public; Attendance; Video Teleconferencing; Secret Ballots. • Deletes 1/1/94 Sunset Clause. • Prohibits any action by secret ballot.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54953.5	Recording of Meetings • The public has a right to tape record; right can be restricted if legislative body makes reasonable finding that recording "constitutes, or would constitute, a disruption."	54953.5	Recording of Meetings • Public has a right to audio/video tape record. Right can be restricted if legislative body makes reasonable finding that recording "cannot continue without noise, illumination, or obstruction of view which constitutes, or would constitute, a disruption." • Any tape made at direction of local agency is public record under PRA. May be erased 30 days after recording. Local agency must provide public with right of inspection "without charge on a tape recorder made available by the local agency."
		54953.6	Broadcast of Proceedings (Analogue to 54953.5 for press/T.V.) • Recording can be restricted on reasonable finding that broadcast "cannot be accomplished without noise, illumination or obstruction of view that would constitute a persistent disruption of the proceedings."

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954	<u>Time and Place of Regular Meetings</u> • Legislative body must provide for time of regular meetings. • Legislative body need not meet within local jurisdiction. • If regular meeting falls on a holiday, held on next business day. • In emergency, meetings held at location designated by presiding officer.	54954	<u>Time and Place of Regular Meeting; Holidays; Emergencies</u> • Legislative body must provide for time and place of regular meetings. • Legislative body must meet within local jurisdiction. • <u>Exceptions</u>: a. Compliance with law; b. Real property inspection; c. Multi-agency discussions; d. No local meeting facility; e. Meeting with U.S./State officials; f. Meeting in out of jurisdiction facility (okay if topic of meeting concerns that facility); g. Office of legal counsel "where to do so would reduce legal fees/costs." • School district provisions. • JPA provisions. • In emergencies, meetings held at location designated by presiding officer if notice goes to media "by most rapid means of communication available at the time." • No requirement that regular meetings, falling on holiday be held on next business day.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.2	Agenda Posting; Action on Other Matters • 72-hour posting of agenda. • No action permitted on nonagendized items. • Exceptions: a. Emergency; b. 2/3 vote (unanimous if less than 2/3 present) upon finding "that need to take action arose" subsequent to posting; c. Continuance of item from meeting held not less than 5 days previously.	54954.2	Agenda Posting; Action on Other Matters • Closed session items must be specified in 72-hour posted agenda. Agenda item description need not exceed 20 words. • Specification of permissible responses to public comment which raises nonagendized items. • No action permitted on nonagendized items. • Exceptions: a. Emergency; b. 2/3 vote (unanimous if less than 2/3 present) upon finding" that there is a need to take immediate action and that need for action came to the attention of the local agency" subsequent to posting; c. Continuance of item from meeting held not less than 5 days previously.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.3	Opportunity for Public to Address Legislative Body • Must be provided at regular meetings. • Need not provide public comment when matter has already been considered by committee composed exclusively of members of legislative body and public comment was taken, unless substantial change. • Legislative body may adopt reasonable regulations, including time limits.	54954.3	Opportunity for Public to Address Legislative Body; Adoption of Regulations • Must be provided at regular meetings. • Need not provide public comment when matter has already been considered by committee composed exclusively of members of legislative body and public comment was taken, unless substantial change. • Every special meeting must provide opportunity for public comment on items considered at special meeting. • Legislative body may adopt reasonable regulations, including time limits. • Legislative body "shall not prohibit public criticism of the policies, procedures, programs, or services of agency or acts or omissions of the legislative body." Does not confer privilege/protection beyond that otherwise provided by law.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
		54954.5	<u>Closed Session Agenda Descriptions</u> • Agency may describe closed sessions as provided below. No violation of 54954.2 if closed session items are described "in substantial compliance with this section." License/permit determination (54956.7). Conference with real property negotiator (54954.8). Conference with legal counsel - existing litigation (54956.9). Conference with legal counsel - anticipated litigation (54956.9). Liability claims (54956.95). Threat to security/public employee appointment/employee evaluation/discipline (54957). Conference with labor negotiator (54957.6). Multi-jurisdictional drug case review/planning (54957.8). Hospital board of directors; medical audits/quality assurance committees (54962; Health and Safety Code).

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54954.6	New or Increased Taxes or Assessments; Hearings; Notice • Before adopting new or ihcreased tax or assessment, legislative body shall conduct one public meeting and noticed public hearing. • 45 days' notice required. • Contents of notice specified. • Agency may recover costs of the meeting/hearing/notice.	54954.6	New or Increased Taxes or Assessments; Hearings; Notice • Public meeting and public hearing still required. • "New or increased assessment" defined. • Notice for public meeting and public hearing shall be given together. • Time periods within which public meeting and hearing must be held or specified. • Contents of notices are given further specification.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54956.9	<u>Pending Litigation; Closed Session</u> • Closed session appropriate where a. Adjudicatory proceeding has been initiated; b. Significant exposure to litigation "based on existing facts and circumstances; c. Local agency has decided to initiate or is deciding to initiate litigation; • Prior to closed session, legislative body shall state under which section closed session is held. • Legal counsel shall prepare memorandum.	54956.9	<u>Pending Litigation; Closed Session; Abrogation of Privilege; Notice</u> • Closed session appropriate where a. "Litigation" has been initiated (litigation defined); b. Significant exposure to litigation "based on existing facts and circumstances"; • "Existing facts and circumstances" defined within limited set of situations: (1) facts not known to potential plaintiff: no disclosure required; (2) facts known to potential plaintiff: must be disclosed; (3) tort claim: claim must be available for inspection per 54957.5; (4) statement made in open meeting threatening litigation; (5) statement made outside open meeting threatening litigation, if public official makes contemporaneous record, which must be available for public inspection per 54957.5. Victim of tortious sexual conduct need not be identified; (6) no required disclosure of materials which are privileged under PRA. • Prior to closed session, legislative body shall state on agenda or publicly the subdivision which authorizes session. • Local agency considered "party" or have significant exposure to litigation if officer/employee is party or has significant exposure during course and scope of employment. • Requirement for legal counsel memorandum deleted.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957	Closed Session (Personnel Matters) • Closed session re appointment employment, evaluation of performance, dismissal, or to hear complaints re employee, unless employee requests public hearing (no procedure for request provided). • "Employee" specifically includes City Manager, City Attorney, Department Head, City Engineer, etc. "Employee" excludes elected officials or officials appointed by legislative body. • Board/commission/committee may hold similar closed personnel meetings.	54957	Closed Sessions; Threat to Public Services; Personnel Matters; Exclusion of Witnesses • Closed session re appointment, employment, evaluation of performance, dismissal, or to hear complaints re employee, unless employee requests public session. Employee must be given 24-hour notice (personal delivery or mail) of right to have matter heard in open session. If notice not given, any action taken is void. • "Employee" includes officer and independent contractor who functions as officer, but excludes elected official, member of legislative body, or other independent contractors. • Closed sessions held under this section "shall not include discussions of a local agency's available funds, funding priorities, or budget." • Right of boards, commissions, committees to hold closed sessions on personnel has been deleted.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957.1	Closed Sessions; Public Report of Action Taken • Legislative body must report after closed session or at next meeting any action (and roll call vote) to appoint, employ, or dismiss public employee arising out of closed session.	54957.1	Closed Sessions; Public Report of Action Taken • Legislative body must report in open session any action taken in closed session (and vote/abstentions) for all classes of closed session items: a. Approval of real estate negotiations (if final approval by agency, reported in public session; if final approval by other party, disclosure on inquiry once approval gained); b. Approval to (initiate), defend, seek/refrain from seeking appellate review, or file amicus curiae brief in any litigation. Adverse parties may or may not need to be identified; c. Approval to settle litigation shall be reported after settlement is final (if final approval by agency, reported in public session; if final approval by other party, disclosure on inquiry once approval gained); d. Disposition as to claims shall be reported as soon as reached (elements to be reported are specified); e. Action to appoint, employ, dismiss, accept resignation of, or "otherwise affect" employment status of employee shall be reported at same session as closed session held. Title of position/change in compensation must be stated. Tolling of announcement shall be deferred until administrative remedies exhausted; f. Agreement re labor negotiations shall be reported once agreement is final. The report shall identify "the item approved." • Reports hereunder may be oral/written. Copies of contracts, settlement agreements, or other documents approved or adopted in closed session must be provided to persons making written or standing request if requester is present at conclusion of closed session. If retyping required, oral summary must be provided to requester and document provided when retyped. Documents shall be provided to all persons by next business day following meeting or when retyping is complete.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
			• No requirement that legislative body approve actions not otherwise subject to legislative body approval. • No action for injury to reputation/liberty/personal interest may be commenced by employee/former employee if disclosure made by legislative body "in an effort to comply with this section."
54957.5	Agendas and Other Writings Distributed for Discussion or Consideration at Public Meeting • Writings distributed to majority of legislative body by agent for legislative body are public records. If distributed prior to meeting, shall be made available on request prior to meeting; if distributed during meeting and prior to discussion, shall be made available prior to and during discussion; if distributed during discussion, shall be made available immediately or as soon thereafter as practical. • Writings described above are subject to PRA. Section shall not be construed to be applicable to writings solely because they are properly discussed in closed session.	54957.5	Agendas and Other Writings Distributed for Discussion at Public Meetings; Public Records; Inspection; Closed Sessions • Writings distributed to majority to legislative body by any person are public records, and shall be made available without delay. • Writings distributed during public meetings shall be made available during public meeting if prepared by public agency, or after the meeting if prepared by some other person. • Section shall not be construed to limit or delay public's right to inspect records required to be disclosed under PRA. • Exception regarding documents considered in closed session has been deleted.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54957.6	Closed Sessions; Legislative Body of Local Agencies; Salaries, Salary Schedules or Fringe Benefits; Mandatory Subjects • Closed session authorized for discussion of salaries/salary schedules/ fringe benefits for represented and unrepresented employees. Agency may review position and instruct agency's designated representative. • Committees/commissions may also hold closed sessions.	54957.6	Closed Sessions: Legislative Body of Local Agencies; Salaries; Salary Schedules or Fringe Benefits; Mandatory Subjects • No change in law, except a. Closed session may also be held for any matter within statutorily-provided scope of representation for represented employees; b. Committees/commissions may no longer hold closed sessions; c. "Employee" includes officers/independent contractor who functions as officer or employee, but not elected official, member of legislative body, or other independent contractors.
54957.7	Closed Sessions: Disclosure of Items to be Discussed • Prior to the closed session, legislative body shall state general reason for session, and may cite statutory authority. For special, adjourned, and continued meetings, statements shall be part of the notice of the meeting.	54957.7	Closed Sessions; Disclosure of Items to be Discussed; Notice • Prior to closed session, legislative body shall disclose items to be discussed in closed session. Disclosure may be by number or letter on the agenda. After closed session, legislative body shall reconvene in open session and make disclosures required by 54957.1. These disclosures can be made at the location of the closed session, so long as public is entitled to be present for announcement.
54959	Penalty for Unlawful Meeting • Liability imposed if meeting held "with knowledge of the fact that the meeting is in violation" of Brown Act.	54959	Penalty for Unlawful Meeting • Liability imposed for meeting "with wrongful intent to deprive the public of information to which it is entitled" under the Brown Act.

Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54960	Action to Prevent Violations or Determine Applicability of Chapter • "Any interested person" may sue to prevent violations or threatened violations or to determine applicability of Brown Act to actions or threatened future actions.	54960	Action to Prevent Violations or Determine Applicability of Chapter • District Attorney or any interested person may sue to prevent violations or threatened violations to determine applicability of Brown Act to actions or threatened future actions, to determine the validity of any rule or action by legislative body to penalize or discourage the expression of one or more of its members, or to compel the legislative body to tape record its closed sessions. • Tape recording: a. Upon judgment of violation, court may order tape recording of closed sessions and the preservation of tapes "for the period and under the terms of security and confidentiality the court deems appropriate"; b. Each recording labeled with date and custodian; c. Discovery Procedures: (1) Written Notice of Motion; (2) Identification of date re recorded meeting; (3) "Affidavit which contains specific facts indicating that a violation of the Act occurred in closed session"; (4) In camera review by court; (5) If court concludes that disclosure "would be likely to materially assist in resolution of the litigation," the court shall make a certified transcript of the portion of the tape recording a public exhibit in the proceeding. • Nothing in this section shall permit discovery of communications which are protected by the attorney/client privilege.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54960.1	<u>Unlawful Action by Legislative Body</u> • Any person may sue to obtain determine that legislative body's action is null and void. • Prior to suit, written demand must be made to cure or correct. Demand must be made within 30 days from date action taken. Legislative body may cure within 30 days. If legislative body does not cure, 15 day time limit to file suit begins to run on the 30th day. Time period to sue: a. 15 days from receipt of legislative body's decision to cure or correct; b. 15 days from expiration of 30-day notice to cure and correct; c. 75 days from date challenged action taken; whichever is earlier. • Action in violation of Brown Act shall not be deemed to be null and void if a. Substantial compliance; b. Action taken in connection with sale/issuance of note, etc.; c. Action gave rise to contractual obligation, upon which party in good faith has relied; d. Action in connection with tax collection. • If evidence is produced showing cure of alleged violation, legal action shall be dismissed with prejudice. • Subsequent action to cure or correct by legislative body not admissible.	54960.1	<u>Unlawful Action by Legislative Body; Action for Mandamus or Injunction; Prerequisites</u> Changes to Section are as follows: • District Attorney may sue. • Demand within 90 (not 30) days of action, unless action taken in open session, for which 30 day statute applies. • Suit must be brought within 15 days of receipt of legislative body's decision to cure or correct, or to not cure or correct, or within 15 days of expiration of 30-day period to cure or correct. • Action in violation of Brown Act shall not be deemed to be null and void if a. Substantial compliance; b. Action taken in connection with sale/issuance of notes, etc.; c. Action gave rise to contractual obligation, other than compensation for services in the form of salary or fees for professional services, upon which party in good faith and without notice of challenge to validity of action detrimentally relies; d. Action in connection with tax collection; e. Plaintiff received actual notice of the item of business to be discussed (72 hours for regular meeting, 24 hours for special meeting, or prior to emergency meeting). • If evidence is produced showing cure of alleged violation, legal action shall be dismissed with prejudice. • Subsequent action to cure or correct by legislative body not admissible.

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Sections	EXISTING LAW	Sections	1993 AMENDMENTS
54961	Use of Facility Allowing Discrimination; Applicability to Local Agencies • No meeting can be conducted in facility which prohibits admittance based on race, creed, color, national origin, ancestry, or sex.	54961	Use of Facility Allowing Discrimination; Applicability to Local Agencies • Adds "inaccessible to disabled persons, or where members of public may not be present without making a payment or purchase" as prohibited items.
54962	Closed Session by Legislative Body Prohibited • Closed sessions are prohibited except as permitted under Brown Act or Health and Safety Code sections relating to hospitals.	54962	Closed Session by Legislative Body Prohibited • Adds additional sections re hospitals and Education Code sections re school districts/community college districts.

Summary of Major Changes
Notice, Location and Agenda

- ✓"Double Trouble" on Taxes/Assessments
- ✓No Out-of-Town Meetings Unless . . . .
- ✓20 Word Agenda Description Guideline
- ✓Closed Sessions Must Be Agendized
  - "Safe Harbor" for Closed Session Agendas
- ✓New Standard for Adding Agenda Items
- ✓Public Testimony at Special Meetings
- ✓Non-Agendized Brief Responses are OK

"Double Trouble" on Taxes/Assessments
Gov't Code § 54954.6

- ✓Public Meeting *and* Hearing Now Required for New or Increased Taxes or Assessments
- ✓Joint Gov't Code § 6063 Notice by Display Ad for 3 Weeks, Beginning at least 45 Days before the Public Hearing
- ✓Effective October 11, 1993

No Out-of-Town Meetings
Gov't Code § 54954(b)(1)-(7)

- ✓7 Exceptions
  - Compliance with Law or Court Order
  - Real or Personal Property Inspection
  - Meetings of "Multiagency Significance"
  - If No Meeting Facility in the City
  - Meetings with State or Federal Officials
  - Meetings In and Regarding City Facilities
  - Pending Litigation Closed Sessions at Legal Counsel's Offices If Cheaper

20 Word Agenda Description
Gov't Code § 54954.2(a)

- ✓Agendas Must Have a "Brief General Description" of Each Item of Business Discussed or Transacted at the Meeting
  - 20 Word Limit is a Guideline, Not a Firm Rule

Closed Sessions Must Be Agendized
Gov't Code § 54954.2(a)

- ✓Be Aware of Multiple Sources of Closed Session Agenda Description Rules
  - § 54954.2(a) — 20 Word Description
  - § 54956.8 Real Estate and Negotiators
  - § 54956.9(b) — Facts Known to π
  - § 54956.9(c) — Authorizing Subdivision and, if § 54956.9(a), Case Title
  - § 54957.7 — Pre-Closed Session Disclosure

Safe Harbor for Closed Session Agenda Descriptions
Gov't Code § 54954.5

- ✓Safe Harbor Info is Deemed Adequate
- ✓Only "Substantial Compliance" is Required
- ✓Are They De Facto Minimum Standards? Use 'Em and Rest Easy!

New Standard for Adding Agenda Items
Gov't Code § 54954.2(b)(2)

- ✓New Law Requires Two Findings by 2/3 Vote
  - Need to Take *Immediate* Action, *and*
  - Need for Action *Came to the City's Attention* After Agenda Posting
- ✓Pros & Cons: Knowledge v. Event Timing and Immediacy Requirement

Public Testimony at Special Meetings
Gov't Code § 54954.3(a)

- ✓Public Testimony Must Now Be Allowed at Special Meetings
  - Applies Only to Meetings and Items for Which Action is Proposed to be Taken
- ✓Opportunity Must Appear on Special Meeting Notices (Agenda)

Non-Agendized Brief Responses are OK
Gov't Code § 54954.2(a)

- ✓New Exceptions to Agenda Requirement
  - Brief Responses to Public Comments & Q's
  - Questions for Clarification
  - References to Staff or Others for Factual Information
  - Request Staff to Report Back Later
  - Member or Body Can Direct Staff to Agendize a Matter
- ✓Issues Raised: How Far Can It Go?

Summary of Major Changes
Closed Sessions

- ✓Pre-Closed Session Announcements
- ✓Post-Closed Session Public Reports of Action & Voting
- ✓"Pending Litigation" Revisited
  - "Significant Exposure" & "Existing Facts and Circumstances"
- ✓Personnel Closed Sessions Restructured
  - Written Employee Notices Required
  - *San Diego Union* Compensation Issues
- ✓No More Attorney Memoranda, but . . .

Pre-Closed Session Subject Matter Announcements
Gov't Code § 54957.7(a)

- ✓Open Session Oral "Disclosure" is Now Required Before Closed Sessions
  - Disclosure Can be a Reference to the Agenda
  - *All* Closed Sessions must be Convened After an Open Session Oral Announcement
  - Disclosures for Real Estate (§ 54956.8) and Pending Litigation (54956.9) Closed Sessions are Simplified by "Safe Harbor"

"Pending Litigation" Revisited
Gov't Code § 54956.9

- ✓What is "Pending Litigation?"
  - Litigation has been *formally initiated*;
  - There is *significant exposure* based upon "existing facts and circumstances;"
  - Based on "EF&C," the session is *only to decide whether* there is significant exposure to litigation to authorize a closed session;
  - The legislative body has decided, or is deciding whether, to initiate litigation.

"Significant Exposure" & "Existing Facts and Circumstances"

Gov't Code § 54956.9(b)

✓"Existing Facts and Circumstances" Def'n Controls Two Key Elements
- Whether There is "Significant Exposure"
- What Gets Disclosed Before the Closed Session

✓The Whole Thing is Slightly Tautological!

"Existing Facts and Circumstances" Def'n

Gov't Code § 54956.9(b)(2)(A)-(E)

✓A 5 Part Definition and Disclosure Rule
- If F&C are not yet known to potential plaintiff(s), need not be disclosed
- If F&C are known to potential plaintiff(s), disclose on agenda or orally.
- A tort claim or other written threat, disclose as a public record
- An oral threat during an open meeting
- An oral threat outside an open meeting, documented by the official receiving it

Personnel Closed Sessions Restructured

Gov't Code § 54957

✓Written 24 Hr Notice to EE Required

✓Independent Contactors Included

✓*San Diego Union* Compensation Issues
- Compensation Can Be Discussed and Established in Closed Session
- Available Funds, Funding Priorities and Budget Cannot Be Discussed

✓Due Process Overlap Issues

No More Attorney Memoranda, But . . . .

Gov't Code § 54956.9

✓Justification Memoranda are No Longer Required

✓May Still Be Useful
- Document Legal Basis for Closed Session, i.e., "on the advice of its legal counsel"
- Document Action Taken and Voting
- Document Basis for Non-Disclosure of Litigation Actions

Types of Closed Sessions

✓Real Estate

✓Labor Negotiations

✓Pending Litigation

✓Personnel Evaluation

✓License Applications

✓Public Security

✓JPA Liability Claims

Real Estate

Gov't Code § 54956.8

✓To Instruct Negotiators Of Real Property Transactions
- Before the Transaction Only
- Price & Terms of Payment
- Open Session Announcement

Labor Negotiations

Gov't Code § 54957.6

✓To Instruct Negotiators Who Are Meeting And Conferring With Represented And Unrepresented Employees

Pending Litigation

Gov't Code § 54956.9

✓To Discuss "Pending Litigation" With The Agency's Attorney.

Personnel Evaluation

Gov't Code § 54957

✓To Consider the Appointment, Employment, Evaluation of Performance, or Dismissal of a Public Employee

License Applications

Gov't Code § 54956.7

✓To Consider License Applications By Persons With Criminal Records

Public Security

Gov't Code § 54957

✓Meetings With Law Enforcement Officials on Matters Posing a Threat to Public Building Security or to the Public's Right of Access to Facilities or Services

JPA Liability Claims

Gov't Code § 54956.95

✓Insurance Pooling JPAs or their Members May Discuss Liability Claims

League of California Cities

"The Public Records Act: Selected Issues"

February 1994

Supplemental Materials

I. Commercial/"Burdensome" Requests

In general, even where the particular document sought constitutes a "public record" under the Public Records Act, the right to inspection may be subject to reasonable rules and regulations as to when, where and how the inspection may be made, in order to guard against loss or destruction of the record and to avoid unreasonable disruption of the functioning of the office in which it is maintained. Also, a request for disclosure of a document should be specific and not overbroad, since a court may deny a request on the ground that to comply with it would impose too onerous a burden on the agency.

The first question in responding to a burdensome request, which may or may not be made for a purely commercial reason, is whether this a request for public records.

The second question is whether the request reasonably describes an "identifiable record", as required by Government Code section 6257, or whether this is a request to copy and inspect undifferentiated massive materials which can be properly denied because its overbreadth would impose too onerous a burden on the agency. The standard here is not the size of the request, but whether the records can be located with reasonable effort. See State Board of Equalization v. Superior Court (1992 3rd Dist.) 10 Cal.App.4th 1177, 1186, 13 Cal.Rptr. 342, and cases cited therein.

The State Board case cites to a couple of federal court decisions under the FOIA - the Federal Freedom of Information Act - which also requires agencies to make records available upon a request for identifiable records. In one of the cited federal cases [Irons v. Schuyler (D.C. Cir. 1972) 465 F.2d 608, 613], the request was for "all unpublished manuscript decisions of the Patent Office." This request described in general a type of record, but the contours of the records were so broad in the context of the Patent Office files that it failed the test of being an "identifiable record." The court said that there were more than 4,780,000 files, "any of which may contain one or more manuscript decisions." Inspection was denied because of the difficulty of locating the requested records.

The other federal case cited in the State Board decision, [Sears v. Gottschalk (4th Cir. 1974) 502 F.2d 122, 125] held that a request for "all existing abandoned U.S. patent applications" was specific enough to constitute an "identifiable record." The court emphasized that the purpose of the "identifiability" requirement is to generate a "reasonable description enabling the Government employee to locate the requested records." The court also said that "aside from the sheer bulk of the material to which access was sought and the accompanying expense and inconvenience of making it available for inspection, defendant does not claim that he does not know.." what the plaintiff is asking for. "If otherwise locatable, the rule in [the Fourth Circuit] is that equitable considerations of the costs, in time and money, of making records available for examination do not supply an excuse for non-production.". 502 F.2d at page 126.

The third question under California's Public Records Act is whether the burden of responding to the request is so onerous to the public agency that based on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record. Govt. C. sect. 6255. There are a couple of cases on the burdensome question which provide some guidance, but each case is evaluated separately based on its own facts.

In Rosenthal v. Hansen (1973 3rd Dist.) 34 Cal.App.3d 754, 110 Cal.Rptr. 257, the plaintiff requested copies of the California Department of Human Resources Development's Benefit Determination Guide, the Amendments and the Unemployment Insurance Notices - all of which were public records. This request imposed on the governmental agency the task of copying the existing 3,783 pages of documents. The court upheld the lower court's ruling that where a general request for copies of public records is made, the Public Records Act requires that the person making the request be provided with the public records so that he may reproduce the public records at his own expense. However, if the request is for specific public records related to a specific subject matter, the governmental agency must provide, upon request, a copy at a reasonable cost. Here, the court determined that this was a general request. In short, the court said governmental agencies may impose reasonable restrictions on general requests for voluminous classes of documents restricting copies to specific requests for copies of specific documents.

Rosenthal also states that when records are maintained in a computer, information must be given out in print-out form or for example, at the option of the agency, it may be released in computer card or tape form. The flexibility is designed to accommodate the various needs of the local agency and the citizen requesting information. But some form of data must be made

available. 34 Cal.App.3d at page 760.

On the other hand, in State Bd. of Equalization v. Superior Court, supra, a request for copies of all records maintained by the Principal Auditor's Office regarding the history and current interpretation of certain tax regulations, which required the agency to segregate out confidential information in 2100 documents and make copies of the segregated documents, was held as not being unduly burdensome so as to preclude disclosure and copying under Government Code section 6255.

The State Bd. of Equalization decision also states that a governmental agency could be required under the Public Records Act to create a list or index of records upon request if the listing called for is ministerial in nature and does not involve the exercise of policy discretion.

Although State Bd. of Equalization rejected the argument that commercial requests should be treated with less regard than non-commercial requests under the Public Records Act, it cited Shippen v. DMV (1984 3rd Dist) 161 Cal.App.3d 1119 for its proposition that "nowhere does the Public Records Act intimate that access to bulk records by commercial users may not be circumscribed by reasonable conditions regarding format and price." State Bd. of Equalization, supra, 10 Cal.App.4th at 1191, citing Shippen v. DMV, supra, 151 Cal.App.3d at 1126-1127.

Finally, please see discussion in ACLU v. Deukmajian (1982) 32 Cal.3d 440, 452-453, 186 Cal.Rptr. 235, which discussed the burdensomeness of segregating confidential information from public records prior to disclosure. The ACLU decision:

> reject[ed] the suggestion that in [weighing the benefits and costs of disclosure under section 6255], the courts should ignore any expense and inconvenience involved in segregating nonexempt from exempt information. Section 6255 speaks broadly of the "public interest," a phrase which encompasses public concern with the cost and efficiency of government. To refuse to place such items on the section 6255 scales would make it possible for any person requesting information, for any reason or for no particular reason, to impose upon a governmental agency a limitless obligation. Such a result would not be in the public interest.

File #12192
March 22, 1994

County of FRESNO

Agenda Item

DATE: March 22, 1994 (Continued from March 8, 1994)

TO: Board of Supervisors

FROM: Phillip S. Cronin, County Counsel Phillip S. Cronin

SUBJECT: Workshop on Amendments to Brown Act

RECOMMENDED ACTION:

Receive workshop regarding amendments to Brown Act.

FISCAL IMPACT:

No fiscal impact to the County.

DISCUSSION:

The Brown Act was significantly amended in 1993. These amendments become operative on April 1, 1994. The workshop presented to you today will briefly review these amendments.

ADMINISTRATIVE OFFICE REVIEW Craig O'Keefe Page 1 of 1

BOARD ACTION DATE March 22, 1994 APPROVED AS RECOMMENDED XX OTHER

HELD

UNANIMOUS _____ CONRAD ___ KOLIGIAN ___ LEVY ___ OKEN ___ VAGIM ___

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EXHIBIT A

OPEN MEETINGS:

THE BROWN ACT AND THE 1993 AMENDMENTS

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. (Gov. Code, § 54953.)

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Barbara Booth Grunwald, Deputy County Counsel
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December 1993
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EXHIBIT B

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
B. OTHER COMMENTS	Specific statutes for individual public agency (e.g., Ed. Code for school district) may add to agenda listing requirements described above.	Format of closed session report: Report may be made orally or in writing. Providing copies of final documents from closed session (note: may charge for copies): 1. If final at meeting: a. Must provide copy at end of closed session, if requested by person with standing request for documentation or person who submitted written request within 24 hours after agenda posted. b. Documents must be available to any person on next business day after action taken. 2. If retyping required: a. Must release copies after retyping completed, to persons requesting as noted above. b. Presiding officer or designee must orally summarize substance of amendments for requesting person or any member of public present at end of closed session who requests the information. (§ 54957.1, subds. (b) and (c))

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
8. Drug law enforcement JPA (§ 54957.8)	CASE REVIEW/PLANNING [No additional information required] [§ 54954.5, subd. (g)]	None.
9. Public hospital (§ 54962)	REPORT INVOLVING TRADE SECRET Discussion will concern_____ _____ [list "proposed new service/program/facility" as appropriate] Estimated date of public disclosure: _____ [list month and year] HEARINGS Subject matter:_____ [list "staff privileges", "report of medical audit committee" or "report of quality assurance committee" as appropriate] [§ 54954.9, subd. (h)]	None.

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
6. Personnel (§ 54957)	PUBLIC EMPLOYEE APPOINTMENT Title:_____ [list description of position to be filled] PUBLIC EMPLOYEE EMPLOYMENT Title:_____ [list description of position to be filled] PUBLIC EMPLOYEE PERFORMANCE EVALUATION Title:_____ [list position title of employee being reviewed] PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE [No additional information required] [§ 54954.5, subd. (e)]	What: Appointment, employment, dismissal, acceptance of resignation, or other action to "affect the employment status of a public employee." When: In open session at public meeting during which closed session held. Exception: Report of dismissal or of nonrenewal of employment contract must be deferred until first public meeting following exhaustion of administrative remedies, if any. Contents: Action taken, title of position, and any change in compensation; roll call vote. (§ 54957.1, subd. (a)(5))
7. Labor Negotiations (§ 54957.6)	CONFERENCE WITH LABOR NEGOTIATOR Agency negotiator:_____ [list name] [list one of following:] Employee organization:_____ [list name of organization] [or] Unrepresented employee:_____ [list position title of unrepresented employee who is subject of negotiations] [§ 54954.5, subd. (f)]	What: Approval of final agreement. When: After agreement is final and has been approved or ratified by other party. Contents: Item approved and other party or parties to negotiation; roll call vote. (§ 54957.1, subd. (a)(6))

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
c. Possible litigation to be initiated by public agency	CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Initiation of litigation pursuant to subdivision (c) of section 54956.9: _____ potential case(s) [list number] [54954.5, subd. (c); § 54956.9]	What: Direction given to legal counsel to initiate or intervene in action. When: In open session at public meeting during which closed session is held. Contents: May limit announcement to statement that direction to initiate or intervene in an action has been given, and particulars will be disclosed after litigation is formally commenced (unless to do so would jeopardize service of process or settlement negotiations); roll call vote. (§ 54957.1, subd. (a)(2))
4. Claims against insurance JPA (§ 54956.95)	LIABILITY CLAIMS Claimant:_____ [list name] [may omit name of victim or alleged victim of tortious sexual conduct or child abuse unless identity is already public] Agency claimed against:_____ [list name] [§ 54954.5, subd. (d)]	What: Disposition of claim When: As soon as reached Contents: Identity of claimant, name of local agency claimed against, substance of claim, and any monetary amount approved for payment and agreed upon by claimant; roll call vote. (§ 54957.1, subd. (a)(4))
5. Threat to security of public building or to public's access to public services/facilities (§ 54957)	THREAT TO PUBLIC SERVICES OR FACILITIES Consultation with:_____ [list law enforcement agency and title of officer] [§ 54954.5, subd. (e)]	None.

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
		<u>Settlement of Litigation</u> <u>If legislative body last:</u> What: Acceptance of settlement offer signed by opposing party. When: In open session at public meeting during which closed session held. Contents: Fact of acceptance and substance of agreement; roll call vote. <u>If other party or court last:</u> What: Final approval. When: As soon as settlement becomes final. Contents: Fact of approval of settlement and substance of agreement; roll call vote. (§ 54957.1, subd. (a)(3))
b. Anticipated litigation against public agency	CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant exposure to litigation pursuant to subdivision (b) of section 54956.9 _____ potential case(s) [list number] [Optional: If facts and circumstances are already known to potential plaintiff(s) (as in accident), may either announce orally <u>or</u> list on agenda.] [§ 54954.5, subd. (c); § 54956.9, subd. (b)(B)]	None.

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
		<u>If other party last</u> What: Approval of final agreement. When: After other party (or agent) has informed local public agency of approval. Not limited to meetings - must also be disclosed upon inquiry by any person. Contents: Fact of approval and substance of agreement; roll call vote. (§ 54957.1, subd. (a)(1))
3. Pending litigation (§ 54956.9) a. Formal litigation already initiated	CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (§ 54956.9, subd. (a)) [list one of following] Name of case:_____ _____ [list claimant's name, name of parties, case or claim numbers] [or] Case name unspecified to protect_____ _____ [list either "service of process" or "existing settlement negotiations"] [§ 54954.5, subd. (c); § 54956.9]	<u>Activity During Litigation</u> What: Direction given to legal counsel to: defend; seek or refrain from seeking appellate review or relief; or enter as amicus curiae (friend of the court). When: In open session at public meeting during which closed session held. Contents: Adverse party or parties (if known) and substance of litigation; roll call vote. (§ 54957.1, subd. (a)(2))

BROWN ACT - CLOSED SESSION CHECKLIST

(All statutory references are to Gov. Code, as amended operative April 1, 1994)

	MINIMUM AGENDA LISTING	REQUIRED REPORT OF ACTION TAKEN
INTRODUCTION	New section 54954.5 requires listings for items, not just general topics. If following descriptions appear on agenda, public agency immune from alleged violation of agenda listing statute.	Most actions taken in closed session (e.g., a decision not to fire an employee) are never reported in open session. Descriptions below are only actions which must be reported.
A CLOSED SESSION TOPICS 1. License application, where applicant has criminal record (§ 54956.7)	LICENSE/PERMIT DETERMINATION _____ applicant(s) [list number] [§ 54954.5, subd. (a)]	What: Denial of application, but only if applicant refuses to withdraw application. When: At the public meeting during which the closed session held or at next public meeting. Contents: Only fact of denial - release of reasons for denial prohibited. (§ 54956.7)
2 Real property negotiations (§ 54956.8)	CONFERENCE WITH REAL PROPERTY NEGOTIATOR Property: _____ [list street address, parcel number, or other unique reference] Negotiating Party: _____ [list name of other party (not agent)] Under negotiation: _____ [list "price" and/or "terms of payment" as appropriate.] [§ 54954.5, subd. (b)]	If legislative body last What: Approval of final agreement. When: In open session at public meeting during which closed session held. Contents: Fact of approval and substance of agreement; roll call vote.

	Transcript is only public exhibit. Prohibits discovery of communications protected by attorney-client privilege. (§ 54960, subds. (b) and (c), added by ch. 1137, § 17.)

3. Attorney's fees (§ 54960.5)

- Court may award to challenger if legislative body has violated Act.
- Court may also award to local agency if it wins and "court finds that the action was clearly frivolous and totally lacking in merit."

(Organizational format adapted from Attorney General publication, Open Meeting Laws (1989).)

BBG:sh
WHOCARE57.1
December 15, 1993

	hours before special meeting, or any time prior to emergency meeting. (Subd. (c)(5), added by ch. 1137, § 18.)

d. Later cure

- If legislative body cures or corrects allegedly improper action through subsequent action, lawsuit must be dismissed with prejudice. (Subd. (d).)
- Subsequent action may not be construed or admitted as evidence of violation of Act. (Subd. (e).)

e. Special penalty for closed session violations

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	If judgment determines that illegal closed session was held, court may order legislative body to tape record future closed sessions and to preserve tapes as deemed appropriate by court. Discovery of tapes in later case restricted. Requires court hearing and affidavit, in camera (private) review by court, and preparation of transcript by court of portion deemed by court to be of material assistance in litigation.

i. Action taken was in substantial compliance with listed sections. (Subd. (c)(1).)

ii. Action taken was in connection with sale or issuance of notes, bonds, or other indebtedness, or related documents. (Subd. (c)(2).)

iii. Action taken was in regard to a contract. (Subd. (c)(3).)

CURRENT LAW	LAW AS OF 4/1/94
Protected if action gave rise to contractual obligation, including contract let by competitive bid, upon which a party has, in good faith, detrimentally relied.	Also requires party to be without notice of challenge to validity of action. Specifies that protections do not apply to compensation for services in the form of salary or fees for professional services. (Amended by ch. 1137, § 18.)

iv. Action taken was in connection with collection of any tax. (Subd. (c)(4).)

v. Person had actual notice.

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Action protected if person (including challenging public agency) had actual notice of item of business at least 72 hours before regular meeting, 24

- Time

CURRENT LAW	LAW AS OF 4/1/94
Written demand must be made within 30 days from date action taken.	Changes to 90 days, unless action taken in open session but in violation of agenda requirements for regular meeting, in which case demand must still be made within 30 days. (Amended by ch. 1137, § 18.)

ii. Response

- Legislative body must, within 30 days of receipt of demand, cure or correct the challenged action or inform demanding party in writing of its decision not to cure or correct challenged action.

- If no action within 30 days, inaction deemed decision not to cure or correct challenged action.

iii. Legal action

- Must be commenced within 15 days of receipt of written notice of legislative body's decision to cure and correct, or not to cure or correct, or within 15 days of expiration of 30-day period to cure or correct. (Rewritten slightly by ch. 1137, § 18.)

c. Protections (subd. (c))

- Even if action in violation of sections specified, may not be declared null and void if any of following conditions exist:

2. For past violation (§ 54960.1)

a. Grounds (subd. (a))

CURRENT LAW	LAW AS OF 4/1/94
Any interested person may commence action by mandamus of injunction to obtain judicial determination that action taken in violation of general "open and public" requirements (§ 54953), agenda requirements for regular meetings (§ 54954.2), notice and hearing requirements for new or increased general taxes/assessments (§ 54954.6), or rules for special meetings (§ 54956) is null and void.	Adds district attorney as "interested person." Also adds, as ground for declaring action void, violation of new requirements for describing closed session items on agenda (§ 54954.5). (Amended by ch. 1137, § 18.)

b. Procedures for challenging (subd. (b))

i. Demand

- Must demand that legislative body cure or correct allegedly improper action.
- Demand must be in writing and must clearly describe challenged action and nature of alleged violation.

VII. PENALTIES AND REMEDIES FOR VIOLATION

A. Criminal Penalties (§ 54959)

CURRENT LAW	LAW AS OF 4/1/94
Each member of legislative body who attends meeting of that legislative body where action taken in violation of any provision of Brown Act, "with knowledge of the fact that the meeting is in violation," is guilty of misdemeanor.	Changes intent language to "with wrongful intent to deprive the public of information to which it is entitled under this chapter." (Amended by ch. 1137, § 16.)

B. Civil Remedies

1. For threatened violation (§ 54960)

CURRENT LAW	LAW AS OF 4/1/94
Any interested person may commence action by mandamus, injunction or declaratory relief for purpose of stopping or preventing violations or threatened violations of Brown Act by members of legislative body, or to determine applicability of Act to actions or threatened future actions of legislative body.	Adds district attorney as "interested person." Also authorizes action to determine validity of rule or action by legislative body to penalize or otherwise discourage expression of one or more of its members, or to compel legislative body to tape record closed sessions (see discussion below). (Subd. (a), amended and subd. designation added by ch. 1137, § 17.)

- Is confidential.
- May be in form of recording.

2. Final documents

- Contracts, settlement agreements, and other documents receiving final approval or adoption in closed session

CURRENT LAW	LAW AS OF 4/1/94
No Brown Act provisions, although such documents usually are public records available for inspection under Public Records Act.	Must be made available to any person on next business day following meeting at which action taken or, if substantially amended, when retyping completed. In addition, must provide copy immediately after closed session to any person who has submitted written request within 24 hours of agenda posting, or who has standing request for documentation as part of request for notice of meetings, if requesting person is present when closed session ends. If retyping necessary, copy need not be released until retyping completed, but presiding officer or designee must orally summarize substance of amendments. (§ 54957.1, subds. (b) and (c), added by ch. 1137, § 13.)

	service, program or facility; must estimate month and year in which public disclosure will be made. For hearing, must specify whether it will concern staff privileges, report of medical audit committee, or report of quality assurance committee. (§ 54954.5, subd. (h), added by ch. 1137, § 10.)

iii. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

iv. Report of action taken

- No Brown Act requirements.

D. Records Pertaining to Closed Session

1. Minute book of closed session (§ 54957.2)

- May keep optional minute book recording topics discussed and decisions made at meeting.

9. Special authorization for certain local agencies

a. School districts and community college districts (§ 54962)

- Student discipline

CURRENT LAW	LAW AS OF 4/1/94
Brown Act prohibits all closed sessions not specifically authorized by Act, but Education Code requires closed session to consider student discipline matters.	Clarifies that closed sessions required by Education Code are permissible under Brown Act. (Amended by ch. 1138, § 10.)

- No agenda listing or reporting requirements under Brown Act.

b. Public hospitals
(Includes city or county hospitals and hospital districts)

i. General rules (§ 54962)

- May discuss hospital trade secrets; sale, lease, or conversion of facilities; or dissolution of district. May also hold hearing regarding professional privileges or reports of medical audits or quality assurance committees.

ii. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	For trade secret, must specify whether discussion will concern proposed new

8. Joint powers agency for drug law enforcement

a. General rules (§ 54957.8)

- Authorized to discuss criminal investigation by JPA or by any party to JPA, and to discuss courses of action in particular cases.

b. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	May simply list as "case review/planning." (§ 54954.5, subd. (g), added by ch. 1137, § 10.)

c. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

d. Report of action taken

- No requirements.

	agency's available funds, funding priorities, or budget. (Amended by ch. 1138, § 8.)

b. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Must list name of negotiator and name of employee organization or position title of unrepresented employee. (§ 54954.5, subd. (f), added by ch. 1137, § 10.)

c. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

d. Report of action taken

CURRENT LAW	LAW AS OF 4/1/94
No Brown Act requirements, but contracts with unions or employees are public records.	Approval of final agreement must be reported after all parties have accepted or ratified. Must identify item approved and other parties to agreement. (§ 54957.1, subd. (a)(6), added by ch. 1137, § 13.)

unrepresented employees. May also meet with state conciliator who has intervened in process. (Subd. (a).)

- Collective bargaining under Meyers-Milias-Brown Act (§ 3500 et seq.) (Note: School districts are governed by EERA (§ 3540 et seq.), not MMBA)

CURRENT LAW	LAW AS OF 4/1/94
May discuss only "mandatory subjects within the scope of representation." (Subd. (b).)	May discuss "any . . . matter within the statutorily-provided scope of representation." (Amended and moved to subd. (a) by ch. 1138, § 8.)

- Unrepresented employees
  - Discussions limited to "salaries, salary schedules, or compensation paid in the form of fringe benefits." (Subd. (a).)

- Definition of employee

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Same definition as in section 54957 (see personnel discussion above). (Subd. (b), amended by ch. 1138, § 8.)

- Excluded topics

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	May not include discussions of local

	position and must specify any change in compensation. **However, report of dismissal or of nonrenewal of employment contract must be deferred until first public meeting following exhaustion of administrative remedies, if any.** (Subd. (a)(5), amended and subd. designation added by ch. 1137, § 13.)

- Limitation on suits by employees

CURRENT LAW	LAW AS OF 4/1/94
No Brown Act provisions; other statutes or privileges may bar liability for disclosure.	"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." (§ 54957.1, new subd. (e), added by ch. 1137, § 13.)

7. Labor negotiations

a. General rules (§ 54957.6)

- May meet with local agency's designated representative(s) to review negotiating position and instruct representative(s). Closed session may take place prior to and during consultations and discussions with bargaining representatives or

	For discipline/dismissal/release of public employee, no additional information required. (New § 54954.5, subd. (e), added by ch. 1137, § 10.)

c. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

d. Report of action taken (§ 54957.1)

- Actions which must be reported

CURRENT LAW	LAW AS OF 4/1/94
Must publicly report, at public meeting during which closed session is held <u>or at next public meeting</u>, action taken "to appoint, employ, or dismiss a public employee." (§ 54957.1.)	"Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee" must generally be reported <u>at public meeting during which closed session held</u>. Report must identify title of

city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided further that nonelected positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions."	sessions for public hospitals under their specific statutes. (Amended by ch. 1137, § 12.)

- Does not include board members!

b. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	For public employee appointment or employment, must specify description of position to be filled. For public employee performance evaluation, must specify position title of employee being reviewed.

	disciplinary or other action taken by legislative body against employee based on specific complaints or charges in closed session null and void. (Amended by ch. 1137, § 12.)

- Must be "an employee"; cannot discuss generic personnel issues in closed session.
  - What counts as generic

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Prohibits discussion under this topic "of a local agency's available funds, funding priorities, or budget." (Amended by ch. 1137, § 12.)

- Definition of "employee"

CURRENT LAW	LAW AS OF 4/1/94
"[T]he term 'employee' shall not include any person elected to office, or appointed to an office by the legislative body of a local agency, provided, however, that nonelective positions of city manager, county administrator,	"[T]he 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." Specifies that definition does not preclude closed

d. Report of action taken

- No requirements.

6. Personnel

a. General rules (§ 54957)

- Grounds: "to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing." (Quote from current §; reworded slightly by ch. 1137, § 12.)

- In hearing, legislative body may exclude other witnesses during examination of a witness, whether hearing public or closed.

- Notice to employee regarding specific complaints or charges

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Adds condition to closed session "on specific complaints or charges brought against an employee by another person or employee." Employee must be given written notice of right to have complaints or charges heard in open rather than closed session. Notice must be delivered to employee personally or by mail at least 24 hours before time set for closed session. If notice not given, any

	name of claimant, name of agency claimed against, substance of claim, and any monetary amount approved for payment and agreed upon by claimant. (§ 54957.1, subd. (a)(4), added by ch. 1137, § 13.)

5. Threat to public facilities or services

a. General rules (§ 54957)

- May meet with Attorney General, district attorney, sheriff, chief of police, or their respective deputies, on matters posing threat to security of public buildings or threat to public's right of access to public services or public facilities.

b. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Must list name of law enforcement agency and title of officer. (§ 54954.5, subd. (e), added by ch. 1137, § 10.)

c. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

4. Claim against joint powers agency for insurance

a. General rules (§ 54956.95)

- Authorized to discuss claim against JPA or member of JPA for payment of tort liability losses, public liability losses, or workers' compensation liability.

b. Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Must identify claimant (except for limited privacy reasons) and name of agency claimed against. (§ 54954.5, subd. (d), added by ch. 1137, § 10.)

c. Oral announcement (§ 54957.7)

CURRENT LAW	LAW AS OF 4/1/94
Must state general reason.	If above information included on agenda, may simply refer to agenda item. (Subd. (a), amended and subd. designation added by ch. 1137, § 15.)

d. Report of action taken

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Disposition must be reported as soon as reached in manner that identifies

	Approval given to initiate or intervene in litigation may merely specify that board has directed legal counsel to initiate or intervene in action, with particulars to be disclosed after formal commencement (except as permitted under subd. (a) of § 54956.9). (§ 54957.1, subd. (a)(2), added by ch. 1137, § 13.)
No Brown Act equivalent, but final settlement agreement is public record.	Approval of final settlement of litigation must be reported as follows: (A) If legislative body last, report acceptance of settlement offer and substance of agreement, at meeting during which closed session held. (B) If other party or court last, disclose fact of approval and substance of agreement upon inquiry by any person after settlement becomes final. (§ 54957.1. subd. (a)(3), added by ch. 1137, § 13.)

iii. Possible litigation to be initiated by local agency (§ 54956.9, subd. (c))

(a) Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	May simply state number of potential cases. (§ 54954.5, subd. (c), added by ch. 1137, § 10.)

(b) Oral announcement

CURRENT LAW	LAW AS OF 4/1/94
Must refer to section 54956.9, subdivision (c). (§ 54956.9.)	If subdivision listed on agenda, may simply refer to agenda item. (§ 54957.7, subd. (a), amended by ch. 1137, § 15.)

c. Report of action taken

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Approval to defend, or seek or refrain from seeking appellate review or relief, or to enter litigation as friend of the court must be reported in open session at meeting during which closed session held. Report must identify adverse parties (if known) and substance of litigation.

	added by ch. 1137, § 10.) May also describe existing facts and circumstances on agenda, in lieu of oral announcement (see discussion below), where facts and circumstances are already known to potential plaintiff(s), as in accident. (§ 54956.9, subd. (b)(B), added by ch. 1137, § 11.)

(c) Oral announcement

- Subdivision authorization

CURRENT LAW	LAW AS OF 4/1/94
Must refer to section 54956.9, subdivision (b). (§ 54956.9.)	If subdivision listed on agenda, may simply refer to agenda item. (§ 54957.7, subd. (a), amended by ch. 1137, § 15.)

- Description of "existing facts and circumstances"

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Must describe existing facts and circumstances, if already known to potential plaintiff(s) (e.g., accident). May list on agenda instead. (§ 54956.9, subd. (b)(B), added by ch. 1137, § 11.)

	(C) Receipt of claim or other written communication threatening litigation; document must be made available for public inspection. (D) Statement in open session threatening litigation on specific matter within responsibility of legislative body. (E) Statement outside open meeting threatening litigation on specific matter within responsibility of legislative body, so long as local agency officer or employee makes written record of statement before board meeting. Document must be available for public inspection (with restrictions for not identifying certain victims or employees). (Amended by ch. 1137, § 11.)

(b) Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	May simply list number of potential cases. (New § 54954.5, subd. (c),

that identification would jeopardize service of process or existing settlement negotiations. (§ 54956.9.)	subd. (a), amended by ch. 1137, § 15.)

ii. Anticipated litigation against local agency (§ 54956.9, subd. (b))

(a) General rules

- Two subdivisions:
  - (b)(1) - Based on existing facts and circumstances, there is significant exposure to litigation against local agency.
  - (b)(2) - Legislative body meeting to decide if closed session proper under (b)(1).
- What constitutes "existing facts and circumstances"

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Limits to five specific categories: (A) Grounds for litigation against agency, not yet known to potential plaintiff(s). (B) Grounds for litigation against agency, already known to potential plaintiff(s). (See discussion of oral announcement requirements below.)

	have been outside course and scope of duties. (Amended by ch. 1137, 11.)

b. Specific circumstances:

i. Formal litigation already initiated (§ 54956.9, subd. (a))

(a) Agenda listing

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Must identify case by claimant's name, names of parties, case or claim number. If not identified, must describe whether identification would jeopardize service of process or existing settlement negotiations. (New § 54954.5, subd. (c), added by ch. 1137, § 10.)

(b) Oral announcement

CURRENT LAW	LAW AS OF 4/1/94
Must refer to section 54956.9, subdivision (a). Must state title of or otherwise specifically identify litigation or must state	If information described at left is included on agenda, oral announcement may simply refer to agenda item. (§ 54957.7,

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communication from attorney to legislative body was included under this statute. California Supreme Court reversed, holding that attorney-client privilege still applies to confidential written communications.	privileged under Public Records Act. (Subd. (b)(F), added by ch. 1137, § 11.)

- "Litigation" defined to include "any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator."

- Memorandum from legal counsel

CURRENT LAW	LAW AS OF 4/1/94
Legal counsel must submit memorandum stating specific reasons and legal authority for closed session, within strict time limit.	Repeals requirement. (Ch. 1137, § 11.)

- Determination of when local agency is "party" or has "significant exposure to litigation."

CURRENT LAW	LAW AS OF 4/1/94
No equivalent.	Includes situations where only named party or potential party is officer or employee, even if activity might

	(A) If board's approval is last, must report approval and substance of agreement in open session at meeting during which closed session held. (B) If other party last, no announcement at meeting required; need only disclose fact of approval and substance of agreement upon inquiry by any person, after local agency informed of approval. (§ 54957.1, subd. (a)(1), added by ch. 1137, § 13.)

3. Pending litigation

a. General rules (§ 54956.9)

- Authorized only "when discussion in open session . . . would prejudice the position of the local agency."
- Must be to confer with or receive advice from legal counsel.
- For purposes of meetings, statute is sole expression of attorney-client privilege.
  - Note

CURRENT LAW	LAW AS OF 4/1/94
In recent case, Court of Appeal had held that written	Codifies case, specifying that nothing in statute requires disclosure of documents