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The Brown Act Handbook

*As updated through the 2020 Legislative Session**

**Includes Appendices on Open Government & Fairness Rules*

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2021 Lozano Smith Brown Act Handbook

Welcome to the 2021 edition of Lozano Smith's Brown Act Handbook. The 2021 edition reflects new legislation, cases, and Attorney General Opinions and makes editorial changes. One section was added to the Brown Act to address social media and there were a few significant cases. New cases and statutes, along with corresponding text changes to the Handbook, are discussed below.

Open meetings were impacted in 2020 due to the COVID-19 pandemic. As authorized by the Governor's emergency orders, and influenced by local health orders, many agencies chose to have meetings entirely virtual, other agencies held hybrid models, while some agencies had their meetings open to the public but with limited capacity. All agencies learned the importance of having a good video platform to broadcast their meetings and found new ways to enable the public to participate. Agencies also learned the importance of roll call votes during a virtual meeting to ensure proper vote recording, a mandatory requirement when any member participates from a different location. Finally, how to handle written comments from those who could not participate in the meeting, whether in person or virtually, became a significant topic of discussion. While the open meeting rules have been relaxed during the pandemic, each agency is still obligated to ensure maximum openness of their meetings to the extent feasible, balancing the openness of meetings with the implementation of safety protocols for the legislative body, staff and the public.

1. New Legislation Finally Attempts to Address Social Media Use and the Brown Act.
When the Brown Act was enacted in 1953, social media as we know it did not exist. Only about half of U.S. households even had a television set in their home. With the rise of the internet and social media, it became possible to have rapid communications and social interactions in a way that the drafters of the Brown Act could not have envisioned. Along with the new possibilities for social interaction came new pitfalls, as comments or even "likes" on a social media post by a quorum of a governing body can inadvertently become a "meeting" under the Brown Act. Until now the law has not attempted to address what types of social media interactions among locally elected officials are permissible.

AB 992, effective January 1, 2021, amends the Brown Act (Gov. Code § 54952.2), to address the use of social media. AB 992 responds to a position paper prepared by Lozano Smith Senior Counsel Jim Sanchez, in his prior role as City Attorney for Sacramento. Under AB 992, a member of a local agency legislative body may communicate with the public on a matter of agency business through social media, either by responding to a question or by soliciting information, without violating the Brown Act. This is true even though other members of the legislative body may see those posts. However, any social media interaction between members of the legislative body, including posting comments or "emojis," re-tweeting or even "liking" a communication from another member, may constitute a Brown Act violation.

Additionally, members of the legislative body should not use their individual social media postings as a concerted effort to engage one another. Despite the Legislature's effort to clarify these issues, questions will continue to arise as to the boundaries of AB 992. Careful thought should be taken whenever engaging in any social media interactions where the agency's business is involved, and the agency's legal counsel should be consulted if there is any doubt about whether a social media interaction might run afoul of the Brown Act.

A new section II.B.6 has been added to the Handbook to address social media.

2. California Attorney General Opines on the Bagley-Keene Open Meeting Act, Providing Guidance Applicable to the Brown Act. On September 22, 2020, the California Attorney General issued an opinion on the Bagley-Keene Open Meeting Act ("Act"). The Act is the equivalent of the Brown Act for state agencies and much of the language is the same. Thus, opinions issued under Act have direct relevance to the Brown Act. In the September 22, 2020 opinion (Opn. No. 18-901), the Attorney General addressed meetings by the Fair Political Practices Commission and advised as follows:
 - a. It would violate the Bagley-Keene Open Meeting Act for a majority of Fair Political Practices Commission members to meet privately over lunch and discuss how the Act applies to the Commission.
 - b. Viewed in light of the Bagley-Keene Act's "substantial compliance" standard [similar to the Brown Act], the Commission's vote on a specific agenda item would not be voidable where the Commission's meeting agenda contained a general statement that the Commission may act on "any" item listed on the agenda, but the description of the specific agenda item stated only that the matter would be "discussed."
 - c. It would not violate the Act for a member of the Commission to respond to an Email message—sent from a member of the public to all five Commission members and other members of the public concerning an item of Commission business—by replying via Email only to the sender of that message and the other members of the public.

While opinions of the Attorney general are not binding, they are persuasive. It is likely that the Attorney General, and a court facing similar questions, would come to the same conclusions under the Brown Act.

The principles set forth in this opinion are reflected throughout the Handbook.

3. Court Rules that the Contemporaneous Record of a Threat of Litigation Required for Closed Session Must Be Included in the Agenda Package. One of the grounds for holding a closed session is anticipated litigation based upon existing facts and circumstances. (Gov. Code § 54956.9.) Existing facts and circumstances include "a statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or

employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting which record shall be available for public inspection pursuant to Section 54957.5.” (Government Code § 54956.9(e)(5).)

In *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360, the court held that the contemporaneous record of a threat of litigation must be included in the agenda package. Otherwise, the court surmised, the record is not available for public inspection as required. The court expressed concern that without including the record as part of the agenda package, the record becomes “illusory” because an interested person would not know what question to ask. This ruling is of some concern because a written threat of litigation or contemporaneous record are not always provided to the legislative body, with legal counsel often presenting a verbal summary or identifying the threat in a confidential report.

One way to avoid running afoul of this requirement is to at a minimum identify the threat of litigation and the availability of the record as part of the closed session agenda description. That way the record is no longer “illusory”. Additionally, it appears that a local agency may still go into closed session under Government Code section 54956.9(d)(2), which allows for consultation with legal counsel regarding significant exposure to litigation based on “facts and circumstances” other than the receipt of an express threat.

Text has been added to Section IV.A.3.c, addressing this case.

4. Actions Taken in Open Session that Have a Connection to an Improperly Agendized Closed Session Will Only be Set Aside if Prejudicial. In the *Fowler v. City of Lafayette* case noted above, neighbors challenged the approval of a 1,100 square foot tennis cabana on a large residential lot. The cabana was approved by the City’s Design Review Commission, on appeal before the Planning Commission, and on further appeal before the City Council after four exhaustive public hearings. During the pending Council appeal hearings, the property owner’s attorney threatened to sue the City if the cabana were denied. The threats were made verbally on several occasions. Planning staff created a contemporaneous record of the threat in the project file.

The City Attorney scheduled a closed session under anticipated litigation to consider the threat. The City Attorney chose to discuss the threat verbally with the Council and did not identify the threat on the agenda or include a contemporaneous record with the agenda package. As noted above, the Court found a Brown Act violation by not including a written record of the threat of litigation with the agenda package. Despite the violation, the court ruled against the neighbor’s request to nullify the City Council’s decision to approve the cabana, a remedy available under the Brown Act. The Court held that nullification is warranted only if prejudice can be shown from the Brown Act violation. Here the court observed that the Council “thoroughly considered” the cabana application at four open meetings. The minutes of the meetings reflected an “exhaustive” discussion. The court ultimately concluded that there is no reasonable argument that plaintiffs lacked the fair opportunity to present their case, that the City failed to consider

it fully, or that plaintiffs would have achieved a more favorable result if they had known the City Council was also considering the litigation threat in closed session.

Text has been added to section VI.D of the Handbook referencing the prejudice requirement.

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OVERVIEW OF THE BROWN ACT

I. INTRODUCTION

The Brown Act, Government Code section 54950 et seq., regulates many aspects of local public agency meetings in both open and closed sessions. The companion statute for state agencies is the Bagley-Keene Act, Government Code section 11120 et seq. The Brown Act and Bagley-Keene Open Meeting Act require that all meetings of legislative bodies be open to the public, except for authorized closed sessions.

The Legislature adopted the Brown Act, commonly referred to as California's "Open Meetings Laws" in 1964, and substantially overhauled the Brown Act in 1993. The Legislature periodically makes substantive and technical changes to the Brown Act. These materials address the Brown Act and include all revisions through the 2017 Legislative session.

On November 2, 2004, the voters approved Proposition 59 which amended Section 3 of Article 1, of the California Constitution to mandate that the Brown Act, Bagley-Keene Open Meeting Act, and the California Public Records Act (Government Code § 6250 et seq.) be broadly construed in furtherance of the public's "right of access to information concerning the conduct of the people's business." Proposition 59 made no substantive changes to these Acts. (*Sutter's Place Inc. v. Superior Court* (2008) 161 Cal.App.4th 1370.)

On November 4, 2014, the voters approved Proposition 42 which again amended Section 3 of Article 1, of the California Constitution. Proposition 42 expands upon the constitutional mandate of Proposition 59 by making compliance with both the Brown Act and the Public Records Act mandatory even if the State Legislature suspends reimbursable mandates for compliance with those laws. As with Proposition 59, Proposition 42 made no substantive changes to these Acts.

The Brown Act is essentially a body of rules designed to ensure open government and fairness. Other open government and fairness rules often intersect with the Brown Act. The two most common sets of additional rules are the California Public Records Act and the rules governing ethics in public service. Because of the importance of these additional rules, beginning with the 2011 edition of this handbook, two appendices were added: Public Records Act Fundamentals and Ethics in Public Service Fundamentals. The two appendices are not designed to provide a comprehensive review of the laws, as with the Brown Act, but rather are designed to remind public officials who use this handbook of these additional and very important open government and fairness rules.

II. THE BROWN ACT APPLIES TO ALL MEETINGS OF LOCAL PUBLIC AGENCY LEGISLATIVE BODIES

A. LEGISLATIVE BODIES

1. Legislative Body Is Broadly Defined and Includes Decision Making and Advisory Bodies.

The definition of “legislative body” means:

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

b. Subcommittees and Commissions. All subcommittees and commissions created by formal action of the legislative body, whether temporary, decision making, or advisory. Formal action is interpreted broadly and would likely include the appointment by the legislative body of members to a committee established at the administrative level, for example a committee created by the superintendent or city manager.

There is one exception to subcommittees being subject to the Brown Act: ad hoc advisory committees consisting of less than a quorum of members of the legislative body. The following rules apply: (1) the committee must be purely an advisory committee with no decision making authority; (2) the committee must be composed solely of less than a quorum of members of the legislative body (two members for a five-member body, three members for a seven-member body); (3) the committee must not have continuing subject matter jurisdiction; and (4) the committee must not have a meeting schedule fixed by formal action of the legislative body.

Fact finding committees consisting of less than a quorum of members from two or more agencies, even if appointed by the legislative bodies, have been held to fall within this exception provided the committee does not meet on a recurring or ongoing basis and provided representatives from each agency independently report back information to their respective governing bodies, not as a joint recommendation.

In addition to the express exception, provisions in the Educational Employment Relations Act, which exempt school district labor negotiation meetings from the Brown Act, will apply to subcommittees created for the purpose of furthering collective bargaining, such as a health benefits committee.

(Education Code § 35147; *Golightly v. Molina* (2014) 229 Cal.App.4th 1501; *Californians Aware v. Joint Labor/Management Benefits Committee* (2011) 200 Cal.App.4th 972; *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799; 64 Ops.Cal.Atty.Gen. 856 (1981).)

c. Private Entity Created by Legislative Body or Funded by a Local Agency.
A board, commission, committee, or other multi-member body that governs a private corporation, limited liability company, or other entity that is either: (1) 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; or (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 as a full voting member by the legislative body of the local agency.

d. Hospital Lessee. 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.

(Government Code § 54952; Education Code § 35147; *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354; *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123; *Epstein v. Hollywood Entertainment District II Business Improvement District* (2001) 87 Cal.App.4th 862; *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781; 101 Ops.Cal.Atty.Gen. 92 (2018); 92 Ops.Cal.Atty.Gen. 102 (2009).)

2. Member of Legislative Body Includes Newly Elected and Appointed Officials Prior to Assuming Office.

The definition of “member of legislative body of a local agency” includes persons who have been elected but have not yet assumed the duties of office. While the Brown Act refers specifically to elected officials, presumably the Legislature intended the rule to apply to appointed officials. These persons must conform their conduct to the requirements of the Brown Act, and they are individually liable for violating the Brown Act prior to assuming office. This does not mean that newly elected or appointed members are authorized to attend closed session meetings of the legislative body prior to assuming the duties of office. Newly elected or appointed members may only attend closed session meetings if they have an official or essential role to play in the closed session.

(Government Code § 54952.1; 88 Ops.Cal.Atty.Gen. 16 (2005); 86 Ops.Cal.Atty.Gen. 210 (2003).)

B. MEETINGS

1. Meetings Occur Whenever the Majority of a Legislative Body Meets to Discuss Agency Business.

a. General Definition. Any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body of the local agency to which it pertains.

(Government Code § 54952.2(a); ___ Ops.Cal.Atty.Gen. ___ (Sept. 22, 2020), Opn. No. 18-901.)

2. Meetings Can Occur Through the Use of Intermediaries.

A “meeting” includes any use of direct communication, personal intermediaries, or technological devices, such as e-mail, that are employed by a majority of the members of the legislative body to discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body. A “collective concurrence” is not necessary to be considered a meeting. Agency employees and officials can still provide information to and answer questions of legislative body members, provided that the employee or official does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(Government Code § 54952.2(b); *Golightly v. Molina* (2014) 229 Cal.App.4th 1501; *Page v. MiraCosta Community College District* (2009) 180 Cal.App.4th 471; *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533, overruled in part by SB 1732; ___ Ops.Cal.Atty.Gen. ___ (Sept. 22, 2020), Opn. No. 18-901; 84 Ops.Cal.Atty.Gen. 30 (2001).)

3. Meetings Do Not Include:

a. Individual Contact. Individual contacts or conversations between a member of a legislative body and any other person.

b. Public Conferences. Attendance of a majority at conferences that are open to the public and involve a discussion of general interest to the public or public agencies of that agency’s type, provided the majority does not discuss local agency business among themselves, other than as part of the scheduled program.

c. Community Meetings. Attendance of a majority at a publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided the majority does not discuss local agency business among themselves, other than as part of the scheduled program.

d. Other Local Agency Meetings. Attendance of a majority at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided the majority does not discuss local agency business among themselves, other than as part of the scheduled meeting.

e. Social Gatherings. Attendance of a majority at a purely social or ceremonial occasion, providing that no local agency business is discussed.

f. Standing Committees. Attendance of a majority at an open and noticed meeting of a standing committee of the legislative body provided that the members of the legislative body who are not members of the standing committee attend only as observers.

g. Staff Meetings. Meetings among staff members are not subject to the Brown Act, provided a majority of the legislative body members are not in attendance, as staff members do not constitute a legislative body.

h. Confirming Availability for a Meeting. Discussions among staff and legislative body members solely to determine availability for a regular or special meeting or coordinating the scheduling of a meeting is not “hearing, discussing, or deliberating on agency business,” as set forth in Government Code § 54952.2, and is therefore not considered a meeting. Additionally, Government Code § 54956 specifically authorizes a special meeting to be called by a majority of the legislative body. The merits of any agenda items should not be discussed.

(Government Code §§ 54952.2(c), 54956; 89 Ops.Cal.Atty.Gen. 241 (2006); see also California Attorney General’s Office, *The Brown Act*, 2003, p. 12 and *League of California Cities, Open and Public IV; a Guide to the Ralph M. Brown Act*, 2nd Edition 2010, p.18.)

4. When Necessary Meetings May be Held by Teleconference.

The Brown Act permits meetings to be held by teleconferencing provided all requirements of the Brown Act are met. Teleconferencing means a meeting in different locations connected by electronic means through either audio or video, or both. During the teleconference, at least a quorum of the members of the legislative body must participate from locations within the boundaries of the local agency and each location must be accessible to the public. Each agenda for teleconferencing meetings must be posted at each location and provide an opportunity for members of the public to address the legislative body directly at each teleconference location. All votes taken during a teleconferenced meeting must be by roll call. Sample teleconference agenda language and sample teleconference script is contained in Appendix 3.

(Government Code § 54953(b).)

5. Simultaneous or Serial Order Meetings.

When a legislative body also sits as the legislative body of another agency, for example members of a city council also serving as members of a local public financing authority, prior to holding a simultaneous or serial meeting of the subsequent legislative body, the clerk or a member of the legislative body must orally announce before the meeting commences the amount of extra compensation or stipend that any member receives from convening the simultaneous or serial meeting, unless the amount of compensation is prescribed by statute.

(Government Code § 54952.3.)

6. Social Media.

In 2020, the Legislature amended the Brown Act specifically to address the use of social media. Similar to the prohibition against using intermediaries to hold a meeting, a majority of the members of a legislative body are prohibited from using a social media platform to discuss agency business of a specific nature among themselves. Additionally, members of a legislative body may not respond directly to any communication from another member on an internet-based social media platform regarding a matter within their subject-matter jurisdiction.

On the other hand, social media may be used for answering questions or providing information to the public as well as to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body.

Language that would have allowed additional social media interactions between members of a legislative body, such as commenting on another member's post, re-tweeting or forwarding, posting an "emoji," or even clicking the "like" button did not make it into the new legislation. Commenting in this manner could constitute prohibited discussion among members of the legislative body.

The new law does not appear to prohibit a member of a legislative body from commenting on, forwarding or "liking" a post made by a member of the public, as long as those comments do not become a discussion of agency business "of a specific nature" among a majority of the members of the legislative body. While the bill does not define the term "of a specific nature," that term is used elsewhere in the Brown Act to distinguish such prohibited discussions from permissible discussions of issues of general interest to the public or to public agencies of a similar type.

Thus, for example, it appears that if a member of the public posts information that is of interest to the agency, one or more individual members of the legislative body could re-post that message in order to make the information more available to the public. However, because there is such a wide variety of types of interactions on social media, there are a host of specific situations that the legislation did not address, and where ambiguities likely will lead to further debate over what exactly the new law permits or prohibits.

(Government Code § 54952.2.)

III.

LOCATION, NOTICE, AGENDA, PUBLIC PARTICIPATION ACCESSIBILITY, AND OTHER MEETING REQUIREMENTS

A. LOCATION OF MEETINGS

1. All Local Agencies Must Meet Within the Jurisdictional Boundaries With Specified Exceptions.

The law requires that meetings of the "legislative body" be held within the territory of the local agency except that meetings may be outside the local agency:

- a. To meet requirements of state or federal law or court order, or to attend a judicial or administrative proceeding to which the agency is a party;
- b. To inspect real or personal property that cannot be brought conveniently to the local agency, provided that the topic of the meeting is limited to items directly related to the real or personal property;

c. To participate in meetings or discussions of multi-agency significance held within the jurisdiction of one of the participating local agencies and open and noticed by all participating local agencies as required by the Brown Act;

d. To meet in the closest meeting facility if none is available inside the local agency boundaries or at the principal office of the local agency if located outside its boundaries;

e. To meet with elected or appointed officials of the United States or the State of California, where a local meeting would be impractical, solely to discuss legislative or regulatory issues affecting the local agency. A report of the substance and outcome of the meeting must be given at the next regular or special meeting held by the local agency;

f. To meet at a facility owned by the local agency where the topic of the meeting is limited to items directly related to the facility; and,

g. To hold a closed session at the office of legal counsel on pending litigation, if the meeting reduces legal costs and if the meeting is noticed as a special meeting.

2. School Districts May Meet Outside of the Jurisdictional Boundaries to Interview Employee Candidates.

Governing boards of school districts may also meet outside of their jurisdictional boundaries to:

a. Attend a conference on non-adversarial collective bargaining techniques.

b. Interview members of the public residing in another district to consider potential employment of an applicant for the position of the superintendent of the district.

c. Interview a potential employee from another district.

3. Joint Powers Authority Must Meet Within Territory of a Member Agency.

A joint powers authority ordinarily must meet within the territory of one member agency, but if members are from throughout the state, it can meet anywhere in the state.

4. Emergency Meetings May Occur Outside of Regular Meeting Place.

If an emergency makes it unsafe for a legislative body to meet at the regular place, the presiding officer may designate a place and notify local media by the most rapid means available.

(Government Code §§ 54954; Education Code § 72000; 94 Ops.Cal.Atty.Gen. 15 (2011); 94 Ops.Cal.Atty.Gen. 33 (2011).)

B. NOTICE AND AGENDA REQUIREMENTS

1. A Schedule for Regular Meetings Must Be Set by Official Action and Each Regular Meeting Requires 72 Hours Notice.

The Brown Act requires each legislative body of a local agency, except for advisory committees or standing committees, to provide the TIME AND PLACE for regular meetings by ordinance, resolution, bylaws, or other rule. In addition, seventy-two (72) hours notice, with the posting of an agenda, is required for a regular meeting. The posting must occur in a place that is freely accessible to the public and on the agency's Internet Website. A touch screen electronic kiosk may take the place of the paper posting.

Beginning January 1, 2019, the internet posting must be on the agency's primary Internet Web site homepage and accessible through a prominent, direct link to the current agenda. Additionally, the agenda must be posted in an open format that allows the agenda to be retrievable, downloadable, indexable, and electronically searchable. Agencies may utilize an integrated agenda management platform to meet these requirements.

Meetings of advisory or standing committees are generally considered regular meetings of the legislative body for which an agenda must be posted at least 72 hours in advance of the meeting. Weekend hours may be counted as part of the 72-hour period.

(Government Code § 54954, 54954.2(a); Education Code §§ 35140, 35145; 99 Ops.Cal.Atty.Gen. 11 (2016); 88 Ops.Cal.Atty.Gen. 218 (2005); 78 Ops.Cal.Atty.Gen. 327 (1995).)

2. Special Meetings May Be Called at Any Time and Require 24 Hours Notice.

A special meeting may be called at any time, including Saturdays, Sundays, and holidays, either by the presiding officer or a majority of the members of a legislative body by delivering a written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting such notice. The notice may be delivered personally or by any other means.

The notice must be received at least twenty-four (24) hours before the time of the meeting set forth in the notice. The notice must also be posted twenty-four (24) hours before the meeting in a location that is freely accessible to the public and posted on the agency's Internet Website.

The notice must include the time and place of the meeting and identify the business to be transacted or discussed. Only the business set forth in the notice may be considered at the meeting. A special meeting may not be called to consider the salaries, salary schedules, or compensation in the form of fringe benefits of a local agency chief executive officer or department head.

The notice must provide an opportunity for members of the public to directly address the legislative body about any item described in the notice prior to or during consideration of that item.

(Government Code §§ 54954.3(a) 54956; Education Code § 35144.)

3. The Media and Members of the Public May Request Special Notice of Meetings.

Upon written request by the media, or any member of the public, the agenda and all documents constituting the agenda packet shall be mailed to the person making the request at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If requested, the agenda and documents in the agenda package must be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the ADA. Written requests are good for the calendar year and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which may not exceed the cost of providing the service. A failure of the requesting person to receive the agenda or agenda packet is not grounds for invalidation of any action taken by the legislative body.

(Government Code § 54954.1.)

4. Meetings May Be Adjourned to Dates and Times Certain Provided the Adjourned Meeting is Posted as Such.

Regular or special meetings, including meetings with noticed public hearings, may be adjourned to a specified date, time, and place. Less than a quorum can adjourn a meeting. If all members are absent, the clerk or secretary to the legislative body may adjourn the meeting or public hearing to a specified date, time, and place. Notice of the adjourned meeting must be posted on or near the door of the meeting within twenty-four (24) hours after the adjournment.

(Government Code §§ 54955, 54955.1.)

5. All Meetings Must Have an Agenda and the Agenda Must Include a Description of Each Item on the Agenda.

The Brown Act requires the preparation of a written agenda for all meetings. Sample agendas are included in Appendix 3. The agenda must contain a brief description of each individual item of business on the agenda, but generally need not exceed twenty (20) words, and must be written in clear and unambiguous terms so that members of the public are aware of what business the agency intends to transact. Items to be discussed in closed sessions are disclosed on the agenda.

Although not specifically required by the Brown Act, the agenda descriptions outlined in Appendix 4 for closed session items provide a “safe harbor” for legislative bodies and elected officials. If legislative bodies or elected officials provide this “safe harbor” information

on the agenda (regardless of the specific format), they cannot be held in violation of the agenda requirements of Government Code section 54954.2.

California courts have interpreted the agenda description requirement as an “elastic standard”, not subject to absolute precision. To ensure compliance, the following guidelines should be followed:

- The description must give fair notice of the essential nature of the business to be considered.
- The public must be provided with more than just clues from which they must then guess or surmise the essential nature of the business to be considered.
- The agenda must not be confusing, misleading or unfairly opaque.

Technical errors or immaterial omissions will not prevent the agency from acting. The agency fulfills its agenda obligations so long as it substantially complies with statutory requirements.

Upon request, the agenda must be made available in alternative formats to persons with a disability as required by Section 202 of the ADA. To implement this requirement, the agenda must include information regarding how, to whom, and when a request for disability related modification or accommodation, including auxiliary aid or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Appendix 3 contains sample agenda language.

As noted, agendas must be posted 72 hours in advance of a regular meeting and 24 hours in advance of a special meeting in a place that is freely accessible to the public, and on the agency’s Internet Web site. Every agenda must list the location of an office at the agency where members of the public may inspect documents distributed to all or a majority of the members of the legislative body. This provision is designed to provide public access to items submitted to the legislative body after the agenda is posted (distributed less than 72 hours prior to a regular meeting).

(Government Code §§ 54954.2, 54954.5, 54955, 54957.5; Education Code § 35145; *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502; *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637; *San Joaquin Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167; *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; ___ Ops.Cal.Atty.Gen. ___ (Sept. 22, 2020), Opn. No. 18-901.)

6. Agenda Packages and Other Legislative Body Materials Must be Made Available to All Legislative Body Members at the Same Time.

When distributing agenda packages and other materials to members of the legislative body, those materials should be provided to all members at the same time. This rule arises from provisions of the California Public Records Act, which require that whenever the local agency is providing a public record to a member of a legislative body in the administration

of the member's duties, the local agency shall not discriminate between or among any of the members as to which record is made available or when it is made available.

In some contexts, there may be a mandatory duty to provide public comments to the legislative body prior to consideration of the matter. For example, planning agency staff must collect and compile public comments regarding a general plan housing element and provide those comments to each member of the legislative body before adoption of the housing element.

(Government Code §§ 6252.5, 6252.7, 65585.)

7. Emergency Meetings Are Permissible.

An exception to the twenty-four (24) hour notice requirement for special meetings is allowed in the case of an emergency situation involving matters that require prompt action due to the disruption or threatened disruption of public facilities and services. Except in "dire emergencies," attempts must be made to contact the media by telephone at least one hour before the meeting, unless the telephones are not working. A "dire emergency" is defined as a crippling disaster, mass destruction, terrorists act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one hour notice before holding an emergency meeting may endanger the public health or safety. For dire emergencies, attempts to contact the media must be made at or near the time that members of the legislative body are notified of the emergency meeting.

Closed sessions are permissible during emergency meetings if agreed to by a two-thirds (2/3) vote of the members present or by unanimous vote if less than two-thirds (2/3) of the members are present.

Following an emergency meeting, the minutes of the meeting, a list of persons notified or attempted to be notified of the meeting, and actions taken must be posted for ten (10) days in a public place.

(Government Code § 54956.5.)

8. Members of the Public May Have a Right to Place Items on the Agenda.

School districts are expressly required to allow members of the public to place matters directly related to school district business on a regular meeting agenda. However, governing boards have discretion to determine whether a proposed agenda item is directly related to district business. Although there is no similar statutory requirement for cities and counties, most agencies have a process where members of the public may request that items within the subject matter jurisdiction of the public agency be placed on the agenda.

Regardless of whether a statutory requirement or local requirement, local agencies can reasonably control when the item is placed on the agenda. Further, legislative bodies need not allow public comment on whether to place an item on the agenda.

(Education Code § 35145.5; *Mooney v. Garcia* (2012) 207 Cal.App.4th 229; *Coalition of Labor, Agriculture & Business v. County of Santa Barbara* (2005) 129 Cal.App.4th 205; *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781.)

9. The Legislative Body May Act on Items Not on the Agenda to Address Emergency Situations, Subsequent Need Items, and Held-Over Items. The Legislative Body May Also Respond to Public Comments and Make Announcements.

Generally, the legislative body may not discuss or take action on any item that does not appear on the posted agenda. There are, however, exceptions to this general rule.

a. “Emergency Situation.” An “emergency situation” is defined as a work stoppage, crippling activity, or other activity that severely impairs public health and/or safety, or a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses immediate and significant peril to the public health and/or safety. 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 that prompt action is required by the legislative body.

b. “Subsequent Need” Items. The legislative body may act upon an item not appearing on a regular agenda upon a finding that there is a need for immediate action and the need for action came to the attention of the local agency after the agenda was posted. The legislative body must make that finding by a two-thirds (2/3) vote of the members present or by unanimous vote if less than two-thirds (2/3), but more than a quorum, of its members are present.

c. Held-Over Items. Items may be acted upon at a meeting if:

- (1) The item appeared on a properly posted agenda for a previous meeting;
and
- (2) The previous meeting occurred not more than five (5) calendar days prior to the date of the meeting at which the item is proposed to be considered;
and
- (3) The item was continued from the previous meeting to the meeting at which action is proposed to be taken.

d. Response to Public Comments: Announcements. Members of the legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Government Code section 54954.3. Members of the legislative body or its staff may also make a brief announcement, make a brief report on his or her own activities, 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. The legislative body or any of its members may also direct staff to place a matter of business on a future agenda.

(Government Code §§ 54954.2, 54954.3, 54956, 54956.5.)

10. Chief Executive Officer and Department Head Salaries and Contracts.

Chief executive officer contracts must be ratified in open session of the legislative body at a regular meeting and reflected in the minutes. In addition, prior to taking final action on the “salaries, salary schedules, or compensation paid in the form of fringe benefits for a local agency executive,” the legislative body must orally report a summary of a recommendation during the open meeting in which final action is to be taken. Local agency executives are defined as employees not subject to the Meyers-Milias-Brown Act (essentially unrepresented employees) and who are either: (a) the chief executive officer, deputy chief executive officer, or an assistant chief executive officer; (b) a department head; or (c) a position held by employment contract.

As a practical matter, what this means is that contracts and salary setting for high ranking local officials should be approved in open session at a regular meeting and not be placed on the consent calendar. Further, the legislative body should receive an oral presentation on the item before taking action. Closed session negotiations with unrepresented employees prior to approval are still permissible.

(Government Code §§ 3511.1, 53262, 54953, 54956.)

11. Substantial Compliance Satisfies the Brown Act’s Agenda Posting Requirements.

Minor violations of the Brown Act’s agenda posting and notice requirements will not automatically result in an illegal meeting provided the agency has otherwise substantially complied with the requirements. The key determination is whether the meeting notice or agenda might have misled or confused members of the public. Whether substantial compliance exists in any given circumstance will depend on the specific facts.

(Government Code § 54960.1(d)(1); *San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637; *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196; ___ Ops.Cal.Atty.Gen. ___ (Sept. 22, 2020), Opn. No. 18-901; 99 Ops.Cal.Atty.Gen 11 (2016).)

C. PUBLIC PARTICIPATION

1. For Regular Meetings the Public Must Be Provided an Opportunity to Address Not Only Any Item on the Agenda but Any Item Within the Subject Matter Jurisdiction of the Agency.

Each agenda for a regular public meeting must provide the public with an opportunity to address the legislative body on any item on the agenda, before or during the legislative body’s consideration of the item, and on any item of interest to the public that is within the subject matter jurisdiction of the legislative body. The legislative body may require that comments specific to items on the agenda be made at the time when the item is being

considered, and not during the general public comment period. This practice ensures that the legislative body has a clear and complete understanding of the public concern regarding an item of business at the time the item is being discussed.

The public comment right includes a right to comment on closed session agenda items prior to the legislative body going into closed session. Only one public comment period is required, even if a meeting carries over to a second day. 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 as set forth in Government Code section 54954.2(b).

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 legislative body on that topic before or during the time in which the committee heard the item. This exception does not apply to special meetings; and
- The item being considered was not substantially changed since it was last considered by the legislative body.

It is always best to facilitate broad public comment consistent with the intent of the Brown Act regardless of the exceptions.

(Government Code § 54954.3(a); *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502; *Preven v. City of Los Angeles* (2019) 31 Cal.App.5th 925; *Mooney v. Garcia* (2012) 207 Cal.App.4th 229; *Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063; *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461.)

2. For Special Meetings, the Public Must Be Provided an Opportunity to Address Any Item on the Agenda.

Every notice for a special meeting must provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting prior to or during consideration of that item.

(Government Code § 54954.3(a).)

3. Reasonable Time Limitations May Be Placed on Public Comment.

The legislative body may place reasonable time limitations on public comment during an open meeting so that meetings can be concluded within a reasonable time. Those time limits may be shorter than time allowed for agency staff or invited speakers. When the legislative body limits the time for public comment, the legislative body must provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body. The requirement

for additional allotted time does not apply if the local agency utilizes translation equipment in a manner that allows the legislative body to hear the translated public testimony simultaneously.

(Government Code § 54954.3(b); *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150; *Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461.)

4. The Legislative Body May Not Prohibit Public Criticism.

The legislative body may not prohibit the public from criticizing the “policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body” regardless of whether it implicates the performance of one or more of its employees.

(Government Code § 54954.3(c); *Perry Educational Association v. Perry Local Educators Association* (1983) 460 U.S. 37, 60; *Leventhal v. Vista Unified School District* (1997) 973 F.Supp. 951; *Baca v. Moreno Valley Unified School District* (1996) 936 F.Supp. 719; *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150; 90 Ops.Cal.Atty.Gen. 47 (2007).)

5. Members of the Public Cannot be Required to Give Names or Sign a Register as a Condition of Attendance.

Members of the public cannot be compelled to provide their name or sign a register as a condition of attendance at a meeting. If a register is provided, it must state clearly that signing the register is voluntary and that all persons may attend the meeting regardless. While it is unclear whether attendance also means participation, it is recommended that providing a name or address not be mandated to speak unless providing that information is directly relevant to the item being discussed. Even under those circumstances, if a member of the public wishes to speak anonymously, the legislative body should consider allowing them to speak, but otherwise give the weight or credibility that such anonymous comments are due.

(Government Code § 54953.3.)

6. The Media and Public May Record and Broadcast Meetings.

The Brown Act allows recording of meetings by still or motion picture camera in addition to audio or video recording, unless the legislative body makes a reasonable finding that the recording cannot continue without noise, illumination or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings. Any recording made at the discretion of the local agency becomes a public record and may not be destroyed for thirty (30) days after the recording and is subject to public inspection.

The Brown Act also provides that a legislative body may not prohibit or otherwise restrict broadcast of its open proceedings unless it makes 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. Radio and television stations are expressly permitted to broadcast and telecast open meetings.

(Government Code §§ 6091, 54953.5, 54953.6.)

7. Documents Distributed in Connection with an Open Session Meeting Are Public Records.

Writings distributed to all or a majority of the members of a legislative body by any person, including staff, a member of the legislative body, or a member of the public, for consideration at a public meeting, are public records. Such writings must be made available for inspection and copying “without delay.” Public records made available to one or more members of the legislative body should be made available to all members of the legislative body at the same time.

With respect to a regular meeting, if writings are distributed to all or a majority of the members of a legislative body less than 72 hours prior to the meeting, these writings must be made available to the public without delay. In addition, the agenda must state the location of an office at the agency where members of the public may inspect these documents.

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. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the ADA.

Ordinary copying fees may be charged for these public records, except that the agency may not impose a surcharge on persons with disabilities in violation of Section 202 of the ADA.

Writings distributed for closed session are exempt from public disclosure if otherwise exempt under the Public Records Act. The Brown Act does not abrogate the attorney-client privilege applicable to written communications.

(Government Code §§ 6252.7, 54957.5; *St. Croix v. Superior Court* (2014) 228 Cal.App.4th 434.)

8. Minutes of Meetings Must Be Kept.

The Brown Act does not require that minutes of local agency meetings be kept. However, other statutory provisions generally require that minutes of open meetings be kept. For example, Education Code section 35145 requires that minutes be kept for school board meetings, and Government Code sections 36814 and 40801 require that minutes be kept for city council meetings. Local agencies have the option of taking minutes for closed session meetings and if they decide to do such, they are considered confidential and not subject to disclosure. Closed session minutes, however, may be subject to disclosure if there is a Brown Act violation.

(Government Code §§ 25101, 25102, 25103, 36814, 54957.2; Education Code § 35145; *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099.)

D. VOTING DETERMINATIONS

Members of the public are entitled to know how each member of a legislative body voted on action items. In that regard, no legislative body may take action by secret ballot, whether preliminary or final. This prohibition applies to both open and closed sessions. If it is not readily apparent from the record how a member voted, the legislative body must publicly report the action taken and the vote or abstention on that action of each member present for the action. A roll call vote is not required except for teleconference and emergency meetings or when otherwise statutorily required, but is recommended when it is likely to be difficult to determine from the record how a particular member voted, or whether a member abstained. It is advisable to include the vote tally, and any abstentions, as part of the minutes.

(Government Code §§ 54953(c), 54956.5, 54957.1.)

E. DISRUPTION OF MEETINGS

Although the Brown Act provides an opportunity for public comment on any item within the subject matter jurisdiction of the legislative body, legislative bodies have the right to control the conduct of their meetings, including placing reasonable time limits on public comment and determining the order of the agenda.

(Government Code § 54954.3(b); *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150; *Chaffee v. San Francisco Library Commission* (2005) 134 Cal.App.4th 109, 116; *Coalition of Labor, Agriculture & Business v. County of Santa Barbara* (2005) 129 Cal.App.4th 205, 209.)

If a person or group of persons disrupt the orderly conduct of a meeting, the legislative body has a right to order those persons removed from the meeting. If order still cannot be restored after removal of the individuals disrupting the meeting, members of the legislative body can order the room cleared and continue with the meeting. Appendix 7 contains sample guidelines for conducting orderly legislative body meetings.

In some circumstances, an advance restrictive order may be obtained in order to place limitations on an individual's attendance at public meetings when there is a credible threat of violence from that person. Such threats are not constitutionally protected speech.

(Government Code § 54957.9; Penal Code § 8403; Elections Code § 18340; *City of Los Angeles v. Herman* (2020) 54 Cal.App.5th 97; *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800; *White v. City of Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425.)

F. MEETINGS MUST BE ACCESSIBLE TO ALL INDIVIDUALS

All open and public meetings must be accessible to disabled persons and meet the protections and prohibitions of Section 202 of the Americans with Disabilities Act ("ADA").

In addition, the legislative body may not meet in a facility that prohibits admittance of any person on the basis of race, national origin, ethnic group identification, religion, age, sex,

sexual orientation, color, disability, or other characteristic listed or defined in Government Code section 11135, or when members of the public may not be present without making a payment or purchase.

(Government Code §§ 54953.2, 54961.)

IV. CLOSED SESSIONS

A. BASIS FOR CLOSED SESSIONS

1. Closed Sessions Are Permitted for Certain Matters Where it Is Necessary to Conduct Business in Private.

Closed sessions are meetings conducted in private without the attendance of the public or press. They are permitted for specific purposes as part of a regular or special meeting, and during an emergency meeting to consider threats to public facilities and services. Courts construe the statutory basis for closed sessions narrowly. Generally, to preserve the confidentiality of closed sessions, only essential staff should be present during the closed session. A member of a legislative body may be excluded from the closed session if the legislative body is addressing litigation in which the excluded member is a party.

(Government Code §§ 54954.5, 54956.5(c); *DeGrassi v. City of Glendora* (2000) 207 F.3d 636; 88 Ops.Cal.Atty.Gen. 16 (2005); 86 Ops.Cal.Atty.Gen. 210 (2003).)

2. Closed Session Agenda Notice Requirements.

Regular meeting agendas and special meeting notices must include a description of the matters to be discussed in closed session. Closed session agenda descriptions may follow a prescribed statutory format. Substantial compliance with this format creates a “safe harbor” against challenges to the adequacy of the notice. Appendix 4 contains the list of statutory prescribed closed session agenda descriptions.

(Government Code §§ 54954.2, 54954.5.)

3. Major Reasons for Permissible Closed Sessions.

a. **Real Property Transactions.** Local agencies negotiating real property transactions may meet in closed session to instruct their negotiators regarding the price and terms of payment for the purchase, sale, exchange, or lease of property. This is a narrowly crafted exception and does not authorize closed session discussions of any and all transactions concerning real property. General briefings on land acquisition, engineering and architectural work, traffic and parking developments and environmental and related impacts are not within the Brown Act’s provision for closed sessions to instruct negotiators regarding purchase or sale of specific real property. The focus of the negotiations should be payment related issues such as:

How low or high to start negotiations with the other party, the sequencing and strategy of offers and counteroffers, as well as various payment alternatives.

(Government Code § 54956.8; *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; 94 Ops.Cal.Atty.Gen. 82 (2011); 93 Ops.Cal.Atty.Gen. 51 (2010).)

b. Labor Negotiations. Closed sessions are permitted to instruct negotiators who are meeting and conferring with represented or unrepresented employees. The term “employee” includes officers and independent contractors who function as officers or employees, but does not include elected officials, members of the legislative body or other independent contractors. The agency may disclose available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the agency’s negotiator. Salaries may be discussed under this section.

(Government Code § 54957.6.)

Project labor agreements (also sometimes called project stabilization agreements) addressing labor on public works projects are not permissible subjects of labor negotiations because the contractors and laborers covered by such agreements are not employees.

(98 Ops.Cal.Atty.Gen. 41 (2015).)

It should be noted that under the Educational Employment Relations Act (the Rodda Act) Government Code section 3540, et seq., negotiations between public school employers and employee organizations are exempt from the Brown Act. (Government Code § 3549.1.) Specifically, unless the parties mutually agree otherwise, the following proceedings are exempt from the Brown Act:

- Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.
- Any meeting of a mediator with either party or both parties to the meeting and negotiating process.
- Any hearing, meeting, or investigation conducted by a fact finder or arbitrator.
- Any executive session of a public school employer or between a public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.
- Meetings of committees created for the purpose of furthering collective bargaining between districts and unions. (*Californians Aware v. Joint Labor/Management Benefits Committee* (2011) 200 Cal.App.4th 972.)

c. Litigation.

- (1) In General. Closed sessions are permitted to confer with, or to receive advice from the agency's legal counsel regarding pending litigation against the agency when discussion in open session would prejudice the agency's position in the litigation.

(Government Code § 54956.9; *Shapiro v. Board of Directors of the Centre City Development Corporation* (2005) 134 Cal.App.4th 170.)

- (2) "Pending Litigation." Litigation includes court actions (including eminent domain proceedings) and adjudicatory proceedings before an administrative agency, hearing officer, or arbitrator. Litigation is deemed pending in four situations:

- Litigation has been formally initiated;

(Government Code § 54956.9(d)(1).)

- 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";

(Government Code § 54956.9(d)(2).)

- Based on "existing facts and circumstances," the legislative body is meeting only to decide whether there is significant exposure to litigation that would authorize a closed session under Section 54956.9(d)(2);

(Government Code § 54956.9(d)(3).)

- The legislative body has decided, or is deciding whether, to initiate litigation.

(Government Code § 54956.9(d)(4).)

- (3) What Constitutes "Existing Facts and Circumstances." The Act defines the key phrase "existing facts and circumstances" in terms of five exclusive situations that can justify an opinion that there is significant exposure to litigation. 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 transaction 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 record of a contemporaneous threat of litigation may also need to be included in the agenda package or otherwise identified on the agenda. 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.

Written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act need not be disclosed when describing “facts and circumstances.”

(Government Code § 54956.9(e)(f); *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360.)

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.

(Government Code § 54956.9(h).)

- (4) Exclusion of Legislative Body Members. A member of the legislative body may be excluded from a closed session meeting when the member is a party or potential party to litigation against the agency and the agency is considering that litigation.

(*DeGrassi v. City of Glendora* (2000) 207 F.3d 636.)

- (5) Settlement Meetings. Settlement meetings with adverse parties and an outside mediator to pending litigation may not be held in closed session. Such meetings extend beyond the receipt of advice from legal counsel.

(Page v. MiraCosta Community College District (2009) 180 Cal.App.4th 471.)

d. To Consider the Appointment, Employment, Evaluation of Performance, Discipline, or Dismissal of a Public Employee and to Hear Complaints Against a Public Employee.

- (1) In General. Closed sessions are permitted to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee, or to hear complaints or charges brought against the employee. This is sometimes referred to as the “personnel exception.” The “employees” covered do not include elected officials or members of the legislative body. Independent contractors are covered provided they are functioning as officers or employees.
- (2) Specific Employees; Subordinate Employees. The personnel matters discussed must relate to specific individuals. Broad-based reviews of employee classifications must be held in open session. In addition, generally, the legislative body may only hold closed sessions to consider the appointment, employment, evaluation, discipline, or dismissal of an employee over which the legislative body has appointing authority. In other words, the closed session is permissible only if the legislative body has decision making authority over that employee.
- (3) Salary Setting. The legislative body may not discuss or take action on proposed compensation except for a disciplinary reduction of compensation or as otherwise permitted in connection with labor negotiations.

(Government Code § 54957.)

- (4) City Manager, Superintendent, and Similar Chief Administrative Officer Contracts. Contracts of employment with a city manager, superintendent, assistant superintendent, associate superintendent, community college president, community college vice president, community college deputy vice president, general manager, county administrator, or other similar chief administrative officer or chief executive officer of a local agency must be ratified in open session of the legislative body and reflected in the minutes. These contracts may also only be approved at a regular meeting. For salaries and fringe benefits, the legislative body must provide an oral report before approval.

(Government Code §§ 53262, 54953, 54956; *Hofman Ranch v. Yuba County Local Agency*

Formation Commission (2009) 172 Cal.App.4th 805; 88 Ops.Cal.Atty.Gen. 16 (2005); 85 Ops.Cal.Atty.Gen. 77 (2002).)

e. To Consider License Applications by Persons With Criminal Records. Closed sessions are permitted to consider license applications by persons with criminal records.

(Government Code § 54956.7.)

f. Meetings Regarding Threats to Security of Public Buildings or Essential Public Services, and to consider School District Tactical Response Plans. A local agency may meet in closed session to confer with the Governor, Attorney General, district attorney, law enforcement officials, security professionals, or agency counsel on matters related to threats to the security of public buildings, a threat to the security of essential public services, including water, drinking water, waste water treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities. The governing board of a school district and county office of education may also meet in closed session with law enforcement officials to approve a tactical response plan developed in consultation with them. Any vote to approve the tactical response plan must be announced in open session following the closed session.

(Government Code § 54957; Education Code § 32281.)

g. Meetings Among Joint Powers Agencies Formed For Insurance Pooling and Local Agency Self-Insurance Authorities To Consider Liability Issues. Joint powers agencies formed for purposes of insurance pooling and self-insurance authorities may meet in 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 self-insurance authority, or a local agency member of the joint powers agency or self-insurance authority.

A JPA may, by policy, bylaw, or including a provision in the JPA agreement, make all information discussed in a JPA board meeting closed session confidential but authorize a JPA board member, who is also on the board of a member agency, to discuss the information with his or her member agency if it "has direct financial or liability implications" for the member agency. If there are such implications, the board member may discuss the information with (1) the member agency's legal counsel to obtain "advice on whether the matter has direct financial or liability implications" or (2) the member agency board during a closed session.

(Government Code §§ 54956.95, 54956.96.)

h. Meetings To Consider A Charge Or Complaint From A Health Care Member. A local agency which provides Medi-Cal services may meet in closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed.

(Government Code § 54956.86.)

i. Meetings To Consider Final Draft Audit Report From Bureau of State Audits. A local agency may meet in closed session to review and consider a response to a confidential final draft audit report from the Bureau of State Audits. After public release of the audit report, further meetings must be held in open session unless exempted from that requirement by some other provision of law.

(Government Code § 54956.75.)

j. Meetings to Consider Investment of Pension Funds. A local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session must be made by roll call vote.

(Government Code § 54956.81.)

4. Closed Sessions Are Prohibited Except as “Expressly Authorized.”

To be lawful, a closed session must be expressly authorized by the Brown Act or other specific statute. An example of other specific statutes are provisions of the Education Code which authorize closed sessions to consider student disciplinary matters and student record challenges.

(Government Code § 54962; Education Code §§ 35146, 48912, 49070.)

B. CLOSED SESSION ITEMS MUST BE IDENTIFIED ON THE AGENDA AND ORALLY ANNOUNCED IN OPEN SESSION

1. The Legislative Body Must Announce in Open Session the Basis for the Closed Session.

Before conducting any closed session, the legislative body must announce in open session the items to be discussed. 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 if properly noticed on the agenda.

(Government Code § 54957.7.)

2. For Real Estate Negotiations, the Legislative Body Must Identify the Property and Negotiating Parties.

Before conducting any real estate negotiation closed sessions, the legislative body must hold an open session during which it identifies the agency negotiators attending the closed session, the property that the negotiation may concern, and the persons with whom the local agency negotiators may negotiate.

(Government Code § 54956.8.)

3. For Pending Litigation, the Case Must Be Identified.

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. If Section 54956.9(d) is the authority (existing litigation on file), the case must be identified by title or otherwise, unless doing so would jeopardize service of process or settlement negotiations.

(Government Code § 54956.9.)

C. A 24-HOUR NOTICE TO AN EMPLOYEE IS REQUIRED BEFORE CONSIDERING SPECIFIC COMPLAINTS OR CHARGES AGAINST THE EMPLOYEE

Before conducting any closed session to hear specific complaints or charges brought against an employee, the affected employee must be delivered written notice of his or her right to have the complaints or charges heard in open session at least twenty-four (24) hours before the meeting. Failure to deliver the notice renders any disciplinary or other action “null and void.” This rule does not apply to employee performance evaluations. This rule also does not apply to meetings to decide whether the complaint or charge would justify disciplinary action, as opposed to an evidentiary hearing to consider the complaint or charge. Sample employee notices are provided in Appendix 6.

(Government Code § 54957; *Ricasa v. Office of Administrative Hearings* (2019) 31 Cal.App.5th 262; *Kolter v. Commission of Professional Competence of Los Angeles Unified School District* (2009) 170 Cal.App.4th 1346; *Moreno v. City of King* (2005) 127 Cal.App.4th 17; *Morrison v. Housing Authority of Los Angeles* (2003) 107 Cal.App.4th 860; *Duval v. Board of Trustees of Coalinga-Huron Unified School District* (2001) 93 Cal.App.4th 902; *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876.)

D. THERE ARE REQUIREMENTS TO REPORT OUT ACTION TAKEN IN CLOSED SESSION

1. The Legislative Body Must Report Out in Open Session Actions Taken and the Vote.

The legislative body must report in open session certain actions taken in closed session and the vote, including:

- Approval of an agreement concluding real estate negotiations.
- Approval for legal counsel to defend, initiate, or settle litigation.
- Disposition of claims.

- Action to appoint, employ, dismiss, non-renew, accept resignation of, or affect the status of any employee. The title of the position and any change in compensation must be reported. A decision to retain an employee need not be reported out.
- Approval of labor negotiation agreements.

Reports may be oral or written. Copies of final agreements must be made available to the public.

Non-action items, such as obtaining direction from the legislative body, regardless of whether a vote is taken on that direction, need not be reported out.

A checklist on reporting out requirements is contained in Appendix 5.

(Government Code § 54957.1; *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 89 Ops.Cal.Atty.Gen. 110 (2006).)

2. The Timing of Reporting Out May in Some Circumstances Be Deferred to a Subsequent Meeting or Upon Inquiry.

Most reporting out is done at the same meeting in which the action is taken. In some circumstances, however, reporting out is deferred to a subsequent meeting or is only required upon inquiry. For example, deferral is allowed when the action taken by the agency is not final until some period of time has passed or the action is contingent upon approval by another party. See Section 54957.1 and the checklist contained in Appendix 5 for details.

3. The Identification of a Victim of Sexual or Child Abuse Need Not Be Disclosed.

No notice, agenda, announcement, or report required under the Brown Act need identify a victim or alleged victim of sexual or child abuse unless the identity of the person has been publicly disclosed.

(Government Code § 54961.)

E. INFORMATION ACQUIRED DURING CLOSED SESSION IS CONFIDENTIAL AND MAY NOT BE RELEASED TO THIRD PARTIES

No person may disclose confidential information that has been acquired by being present in an authorized closed session to a person not entitled to receive that confidential information, unless the legislative body authorizes disclosure of that confidential information. “Confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session.

This restriction also applies to an agency appointed representative sitting on another agency board that holds a closed session. The appointed official may not disclose confidential information from that closed session to its appointing legislative body.

(Government Code § 54963; *Harron v. Bonilla* (2005) 125 Cal.App.4th 738, review granted (28 Cal.Rptr.3d 3) and subsequently dismissed (49 Cal.Rptr.3d 654); *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324; 86 Ops.Cal.Atty.Gen 210 (2003).)

V. SPECIAL PROVISIONS FOR HEARINGS ON TAXES AND ASSESSMENTS

When considering new or increased taxes and assessments which are not subject to separate notice and public hearing requirements, local legislative bodies must hold a public meeting and public hearing in accordance with procedures set forth in the Brown Act. These procedures require that the local agency publish a joint notice of the meeting and the public hearing in the newspaper, with not less than forty-five (45) days notice of the hearing and not less than ten (10) days notice of the meeting. The meeting must also take place at least seven (7) days prior to the public hearing. The notice must contain detailed information about the nature, purpose, and amount of the proposed tax or assessment. 2011 legislative changes clarified what information is required to be provided to businesses subject to the assessment.

Any new or increased assessment subject to the notice and hearing requirements of Proposition 218 (California Constitution, Articles XIIIIC and XIIID) are not subject to these notice and hearing requirements.

With the adoption of Proposition 26 in 2010, the definition of taxes has been expanded to include regulatory and service fees where those fees exceed the costs of implementing the regulation or providing the service.

(Cal. Const., art. XIIIIC, § 1; Government Code § 54954.6.)

VI. VIOLATIONS AND REMEDIES

A. INTENTIONAL VIOLATIONS OF THE BROWN ACT ARE MISDEMEANORS

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

(Government Code § 54959.)

B. THE DISTRICT ATTORNEY AND ANY INTERESTED PERSON MAY BRING AN ACTION TO SET ASIDE A DECISION MADE IN VIOLATION OF THE BROWN ACT: A DEMAND FOR CURE AND CORRECTION IS FIRST REQUIRED

The district attorney or any interested person may commence an action to determine that an action taken by the legislative body is null and void because of violation of the Brown Act. Before bringing such an action, demand must be made to correct the alleged violation within thirty (30) days from the date the action was taken, except that if the alleged violation occurred in a closed session, demand must be made within ninety (90) days.

(Government Code §§ 54960, 54960.1; *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502.)

C. THE DISTRICT ATTORNEY AND ANY INTERESTED PERSON MAY BRING AN ACTION TO ADDRESS PAST VIOLATIONS OF THE BROWN ACT: A CEASE AND DESIST LETTER IS FIRST REQUIRED

In 2012, the Legislature approved statutory changes to address the situation of agencies repeatedly violating the Brown Act and either curing the violation if action was taken, or otherwise subsequently complying with the Brown Act, thereby avoiding legal action and an award of attorneys' fees, leaving no effective remedy. Government Code section 54960.2 allows the district attorney or any interested person to bring an action to specifically address past violations of the Brown Act.

Before initiating such an action, the district attorney or interested person must submit a cease and desist letter to the clerk or secretary of the legislative body setting forth the alleged violation. The letter must be sent within nine months of the alleged violation and the legislative body then has 30 days to provide an unconditional commitment to cease, desist from, and not repeat the past action that is an alleged violation of the Brown Act. The legislative body need not admit a violation. Specific language that must be used is set forth in the Statute. It is recommended that an unconditional commitment include specific actions, such as a formal policy change.

If the legislative body fails to provide the unconditional commitment, legal action may be instituted within 60 days. The legislative body may subsequently rescind the commitment, which will then allow legal action to be commenced.

The cease and desist letter is not a requirement to address ongoing or threatened future actions of the legislative body through declaratory and injunctive relief.

(*TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140; *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502; *Center for Local Government Accountability v. City of San Diego* (2016) 247 Cal.App.4th 1146; Government Code §§ 54960, 54960.2)

D. THE REMEDIES FOR A VIOLATION OF THE BROWN ACT INCLUDE NULLIFICATION OF ACTION TAKEN, CURE AND CORRECTION, THE REQUIREMENT TO AUDIO RECORD CLOSED SESSIONS, AN AWARD OF ATTORNEYS' FEES, AND IN CERTAIN CIRCUMSTANCES DAMAGES

Most actions taken in violation of the Brown Act can be remedied by correction of the violation. The cure and correction remedy is not available for violations of the 24-hour employee notice requirement. Actions taken in violation of the 24-hour notice requirement are null and void which means that employees terminated after violating this provision may be entitled to damages for wrongful termination.

If there is a violation of the closed session requirements, a court can order the local agency to audio record its closed sessions. If action is taken in open session on an item related to an illegal closed session discussion, the action can be set aside if prejudice is shown from the violation. Prejudice will generally not exist if the public is afforded a full and fair opportunity to comment on the item.

A prevailing plaintiff is entitled to costs and attorneys' fees unless special circumstances justify denial of such an award. A prevailing defendant (public agency) may be awarded costs and fees only if the court finds the action was frivolous and totally lacking in merit.

(Government Code §§ 54960, 54960.1 and 54960.5; *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360; *TransparentGov Novato v. City of Novato* (2019) 34 Cal.App.5th 140; *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502; *Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063; *Moreno v. City of King* (2005) 127 Cal.App.4th 17; *Los Angeles Times Communications v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313.)

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APPENDICES

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APPENDIX 1

PROPOSITIONS 59 AND 42

**(Article 1, Section 3, of the
California Constitution)**

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PROPOSITIONS 59 AND 42 CALIFORNIA CONSTITUTION

Article 1, Sec. 3. Right of Access to Government Information

(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

(7) In order to ensure public access to the meetings of public bodies and the writings of public officials and agencies, as specified in paragraph (1), each local agency is hereby required to comply with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and with any subsequent statutory enactment amending either act, enacting a successor act, or amending any successor act that contains findings demonstrating that the statutory enactment furthers the purposes of this section.

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APPENDIX 2

RALPH M. BROWN ACT

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THE RALPH M. BROWN ACT

GOVERNMENT CODE

TITLE 5. Local Agencies

DIVISION 2. Cities, Counties, and Other Agencies

PART 1. Powers and Duties

Common to Cities, Counties, and Other Agencies

CHAPTER 9. Meetings

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. Title of act

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.

54952. Legislative body, definition

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, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter,

ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

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

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

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

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

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

54952.1. Conduct and treatment of electee

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2. Meeting, definition; social media

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

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

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency,

from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) “Discuss among themselves” means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) “Internet-based social media platform” means an online service that is open and accessible to the public.

(iii) “Open and accessible to the public” means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

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

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

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

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

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

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

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

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

54952.3. Simultaneous or serial order meetings of a subsequent legislative body; compensation and stipends

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

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

54952.6. 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.

54953. Meetings to be open and public; attendance; teleconferencing; secret ballots

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

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

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

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

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

- (c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.
- (2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.
- (3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.
- (d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.
- (2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.
- (3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.
- (4) This subdivision shall remain in effect only until January 1, 2018.

54953.1. Grand jury testimony

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

54953.2. Compliance with Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of

1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

54953.3. 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 with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

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

54953.6. Broadcasts of proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

54953.7. Allowance of greater access to meetings beyond minimal standards

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. Rules for conduct of business; time and place of meetings

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

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

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

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

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

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

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

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

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

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

(1) Attend a conference on non-adversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees'

potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

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

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

54954.1. Request for agenda and agenda packet; renewal; fee for mailing

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

54954.2. Agenda; posting; action on other matters; posting on Internet Web site

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

accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) “Integrated agenda management platform” means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) “Legislative body” has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

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

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

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

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

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

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

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

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

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

54954.3. 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, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) (1) 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.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

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

54954.4. 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 agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

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

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

Agency negotiator: (Specify names of negotiators attending the closed session) (If

circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

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

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

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

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION

(Paragraph (1) of subdivision (d) of Section 54956.9)

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

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

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

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

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

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

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

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

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

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING:

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

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

REPORT INVOLVING TRADE SECRET

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

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

HEARINGS

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

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

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

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

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name):

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

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

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

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

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

54954.6. New or increased taxes or assessments; public meetings and public hearings; joint notice requirements

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local

officials 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 that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.
- (B) A service charge, rate, or charge, unless a special district’s principal act requires the service charge, rate, or charge to conform to the requirements of this section.
- (C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.
- (D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.
- (E) Standby or immediate availability charges.

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

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

Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

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

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

(B) The activity to be taxed.

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

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

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

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

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

(1) The property owners subject to the assessment.

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

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

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

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

requirements of this section.

54955. 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, bylaw, or other rule.

54955.1. Continuance of hearing

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; meetings regarding local agency executive salaries, salary schedules, or compensation in form of fringe benefits; posting on Internet Web site

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

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

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

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

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

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

54956.5. Emergency meetings in emergency situations; notice

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

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

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

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

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone

services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

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

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

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call 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 regarding 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.

54956.75 Closed session to consider response to confidential final draft audit report; public release of report

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

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

54956.8. Real property transactions; closed session 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 grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern and the person or persons with whom its negotiators may negotiate.

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

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

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

54956.81 Investment of pension funds; closed session

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

54956.86. Closed session for health plan member

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

54956.87. Records of certain health plans; closed session meetings on health plan trade secrets

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2

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

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

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

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

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

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

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

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

54956.9. Closed sessions concerning pending litigation; attorney-client privilege

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

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

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

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

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

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

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

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

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

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

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

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

- (4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.
- (5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.
- (f) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).
- (g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.
- (h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

54956.95. Closed sessions by joint powers agency formed for insurance pooling; self-insurance authority; 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.

54956.96 Joint powers agency closed session meetings; confidential information; Clean Power Alliance of Southern California

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

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

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

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

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

(b) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California, or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California, or its successor entity, in lieu of a local agency member's regularly appointed member, to attend closed sessions of the Clean Power Alliance of Southern California, or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member, and that is presented to the Clean Power Alliance of Southern California, or its successor entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

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

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California, or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California, or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California, or its successor entity.

(c) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a) or (b), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

54956.97 Public bank; governing board or committee of governing board; closed session

Notwithstanding any provision of law, the governing board, or a committee of the governing board, of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

(a) A loan or investment decision.

(b) A decision of the internal audit committee, the compliance committee, or the governance committee.

(c) A meeting with a state or federal regulator.

54956.98 Public bank; policy or bylaw; information from a closed session considered confidential

(a) For purposes of this section, the following definitions shall apply:

(1) “Shareholder, member, or owner local agency” or “shareholder, member, or owner” means a local agency that is a shareholder of a public bank.

(2) “Public bank” has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member, or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member, or owner local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

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

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member, or owner local agency.

(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member, or owner local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member, or owner local agency's regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member, or owner local agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the public bank governing board pursuant to paragraph (1) of subdivision (b).

54957. Closed session regarding threat to public facilities and services; personnel matters; exclusion of witnesses; employee defined; discussion of compensation

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

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against

an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

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

(4) For the purposes of this subdivision, the term “employee” shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials’ ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

54957.1. Public report of action taken in closed session

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

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

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

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

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

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

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

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

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

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

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

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

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

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

54957.2. Minute book record for 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; writings distributed less than 72 hours prior to meeting; public records; inspection; closed sessions

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

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

all, of the members of the body.

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

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

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

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

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

54957.6. Closed sessions regarding employee matters; meeting with designated representatives

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

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

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

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

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

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

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

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

54957.7. Disclosure of items to be discussed at closed session

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

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

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

54957.8. Closed sessions of multijurisdictional law enforcement agencies

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

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

criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

54957.9. Authorization to clear room where meeting willfully interrupted; readmission

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

54957.10 Closed sessions; local agency employee application for early withdrawal of funds in deferred compensation plan; financial hardship

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

54958. 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. Criminal penalty for violation of chapter

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

54960. Actions to stop or prevent violations of meeting provisions; recording closed sessions

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to

penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

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

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

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

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

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

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

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

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

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

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

54960.1. Proceeding to determine validity of action; mandamus or injunction; demand for correction

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

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

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

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

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

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

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

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

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

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the

action, detrimentally relied.

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

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

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

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

54960.2. Actions to determine past violations by legislative body; conditions; cease and desist letters

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

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

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

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

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist

letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

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

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

To _____:

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

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

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

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

Very truly yours,

[Chairperson or acting chairperson of the legislative body]

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

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

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

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

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

54960.5. 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, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination

of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

54961. Meetings prohibited in facilities; grounds; identity of victims of tortious sexual conduct or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

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

54962. Prohibition against closed sessions except as expressly authorized

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

54963. Confidential information acquired during an authorized closed session

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX 3

SAMPLE AGENDAS

[Intentionally Blank]

[SAMPLE CITY COUNCIL AGENDA]

____ CITY COUNCIL MEETING AGENDA ____, 20__ ; __:__ p.m. CITY COUNCIL CHAMBER [ADDRESS]

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Council Chamber to otherwise participate at this meeting, including auxiliary aids or services, please contact the City Clerk at (____) ____-____. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council meeting.

Documents provided to a majority of the City Council regarding an open session item on this agenda will be made available for public inspection in City offices located at [_____] during normal business hours. [OPTIONAL:] In addition, such writings and documents may be posted on the City's website, www._____.

The City Council welcomes participation at Council Meetings. Members of the public may address the Council on any item of interest to the public that is scheduled on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less.

1. **Meeting Called to Order.**
2. **Flag Salute.**
3. **Roll Call.**
4. **Public Comments.** *(This is an opportunity for members of the public to address the City Council on any matter within the City Council's jurisdiction that is not listed on the Agenda. To ensure fair and equal treatment of all who appear before the City Council, and to expedite City business, speakers will be limited to three minutes. The three-minute per speaker time limitation may be extended for good cause by the Mayor, or by majority vote of the Council Members. Anyone wishing to be placed on the Agenda for a specific topic should contact the City Manager's office and submit correspondence at least 10 days before the desired date of appearance.)*

With respect to the approval of resolutions and ordinances, the reading of the title thereto shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Council member that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

5. **Public Hearings.**
 - A.
 - B.

6. **Communications.**

7. **Administrative Items.**

- A. Administration (City Manager, City Clerk, Finance).
 - 1.
 - 2.
- B. Community and Economic Development.
 - 1.
 - 2.
- C. Public Works.
 - 1.
 - 2.
- D. Public Safety.
 - 1.
 - 2.
- E. Planning.
 - 1.
 - 2.

***Adjournment to [Special Agency Meeting]
(See Attached Agenda)***

8. **Consent Calendar.** *(Items considered routine in nature are placed on the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Council member requests individual consideration. A Council member's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed. Motions in favor of adoption of the Consent Calendar are deemed to include a motion to waive the reading of any ordinance or resolution on the Consent Calendar.)*

- A.
- B.
- C.

9. **Council Items.**

- A. Committee Reports.
- B. Council Comments.
- C.

10. **Closed Session.**

- A.
- B.
- C.

11. **Adjournment.**

[SPECIAL AGENCY AGENDA]

_____, 20____ ; ____:____ p.m.
CITY COUNCIL CHAMBER
[ADDRESS]

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Council Chamber to otherwise participate at this meeting, including auxiliary aids or services, please contact the City Clerk at (____) ____ - _____. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the Council meeting.

Documents provided to a majority of the Agency Board regarding an open session item on this agenda will be made available for public inspection in City offices located at [_____] during normal business hours. [OPTIONAL:] In addition, such writings and documents may be posted on the City's website, www._____.

The Agency Board welcomes participation at Agency Meetings. Members of the public may address the Board on any item of interest to the public that is scheduled on the Agenda. In order for everyone to be heard, please limit your comments to 5 minutes or less.

1. **Meeting Called to Order.**
2. **Roll Call.**
3. **Public Comments.** *(This is an opportunity for members of the public to address the Board on any matter within the Board's jurisdiction that is not listed on the Agenda. To ensure fair and equal treatment of all who appear before the Board, and to expedite Agency business, speakers will be limited to three minutes. The three-minute per speaker time limitation may be extended for good cause by the Chairperson, or by majority vote of the Board Members. Anyone wishing to be placed on the Agenda for a specific topic should contact the Executive Director's office and submit correspondence at least 10 days before the desired date of appearance.)*
4. **Public Hearings.**
5. **Administrative Items.**
6. **Consent Calendar.** *(Items considered routine in nature are placed on the Consent Calendar. They will all be considered and voted upon in one vote as one item unless a Member requests individual consideration. A Board member's vote in favor of the Consent Calendar is considered and recorded as a separate affirmative vote in favor of each action listed.)*
7. **Board Items.**
 - A. Board comments.

Adjournment to City Council Meeting

[Intentionally Blank]

[SAMPLE SCHOOL BOARD AGENDA]

[Name] School District Board of Trustees Regular Meeting

[Room]
[Name] School District
[Street address, City]
[_____, 20__]

[Time]--Public Session (For Purposes of Opening Meeting Only)
[Time]--Closed Session to Discuss Closed Session Items Listed Below
[Time]--Reconvene in Public Session

PLEASE NOTE - DESIGNATED TIMES FOR AGENDA ITEMS ARE ESTIMATES

In compliance with the Americans with Disabilities Act, for those requiring special assistance to access the Board meeting room, to access written documents being discussed at the Board meeting, or to otherwise participate at Board meetings, please contact the Board Secretary _____ at [telephone #] for assistance. Notification at least 48 hours before the meeting will enable the District to make reasonable arrangements to ensure accessibility to the Board meeting and to provide any required accommodations, auxiliary aids or services.

Documents provided to a majority of the Governing Board regarding an open session item on this agenda will be made available for public inspection in the District Office located at [_____] during normal business hours. [OPTIONAL:] In addition, such writings and documents may be posted on the District's website, www._____.

AGENDA

I. OPENING BUSINESS

- A. Call Public Session to Order
- B. Roll Call
- C. Pledge of Allegiance
- D. Adopt Agenda [If the Governing Board determines it wishes to add items to the Agenda, this would be the appropriate time.] [There must be an emergency or some urgency to add an item to the agenda and a super majority vote of the Board is required to add the item.]
- E. Identify Closed Session Topics of Discussion (Please refer to the list of items identified in Agenda Section III, below.)
- F. Allow for Public Comment on Closed Session Topics
- G. Immediately Adjourn to Closed Session

II. PUBLIC COMMENT PERIOD RE CLOSED SESSION ITEMS

General public comment on any closed session item that will be heard. The Board may limit comments to no more than ____ minutes pursuant to Board policy.

III. CLOSED SESSION

Those items checked will be discussed in closed session.

- A. The items to be discussed in Closed Session are those that are marked by an (X):

- ☐ 1. Conference with Real Property Negotiator.

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

Agency Negotiator: [Specify names of negotiators attending the closed session]

Negotiating Parties: [Specify name of parties].

Under Negotiation: [Specify whether instruction to negotiator will concern price, terms of payment, or both].

- ☐ 2. Public Employee Appointment.

Title: [Specify description of position to be filled].

- ☐ 3. Public Employee Performance Evaluation.

Title: [Specify position title of employee being reviewed].

- ☐ 4. Public Employee Discipline/Dismissal/Release/Complaint.

[No additional information is required in connection with a closed session to consider discipline, dismissal, or release. There is one trial case that held that the employee should have been given at least written notice at least 24 hours in advance of the meeting. The California Attorney General has issued an opinion that such notice is not required when the Board is considering the evaluation of probationary teachers in connection with the possibility of giving a notice of non-reelection.]

- ☐ 5. Conference with Labor Negotiator.

Agency negotiator: [Specify names of designated representatives attending the closed session].

Employee organization: [Specify name of organization representing employees who are the subject of the negotiations].

or

Unrepresented employee: [Specify position title of unrepresented employee who is the subject of the negotiations].

☐ 6. Conference with Legal Counsel Regarding Existing Litigation pursuant to paragraph (1) of subdivision (d) of Government Code section 54956.9.

Name of case: [Specify by reference to claimant's name, names of parties, case or claim numbers. For example, Granny Smith v. Applegate School District, Case No. BC 45926].

or

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

☐ 7. Conference with Legal Counsel Regarding Existing Litigation pursuant to paragraph (1) of subdivision (d) of Government Code section 54956.9 (d)(1).

Special Education Dispute, Student # _____ [e.g. include non-personally identifiable student number].

☐ 8. Conference with Legal Counsel Regarding Anticipated Litigation.

☐ Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Government Code section 54956.9: [Specify number of potential cases; e.g., "There are three potential lawsuits"].

or

☐ Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code section 54956.9: [Specify number of potential cases; e.g., "The Governing Board has decided or is deciding whether to initiate litigation on three matters"].

☐ 9. Liability Claims.

Claimant: [Specify name unless claimant is a victim or alleged victim of tortious sexual conduct or child abuse and that person's name has not yet been publicly released].

Agency claimed against: [Specify name].

() 10. Individual Student Disciplinary Matter(s)/Student Need(s)

IV. RECONVENE IN OPEN SESSION

- A. Adjourn Closed Session and Reconvene Open Session
- B. Report Action Taken in Closed Session [Note: Identify vote or abstention of each board member; for student expulsions, final Board action must be taken in open session (Education Code § 48918(j)). Additional note: A settlement of pending litigation, or an agreement concluding real estate or labor negotiations should not be reported until the actions are final. Disposition of claims, on the other hand, must be reported immediately including (1) the name of the claimant, (2) the name of the local agency claimed against, (3) the substance of the claim and (4) any monetary amount approved for payment and agreed upon by the claimant. (Government Code § 54957.1.)]

V. RECOGNITIONS

- A. Acknowledgement of Visitors
- B. Acknowledgement of Honors and Awards:
 - 1.
 - 2.

VI. COMMUNICATIONS

- A. Reports and Presentations:
 - 1. Routine status reports regarding school activities, meeting schedules, conferences attended, suggestions for future Board consideration and recent developments from:

[Identify Groups Making Presentation]
 - 2. Initial presentation of certificated union's bargaining position for the [school year].
 - 3. Update on cafeteria construction project.
 - 4. Status report on District enrollment.
- B. Review and discuss the following communications from individuals and/or organizations regarding District programs and services: [List communications from individuals and/or organizations]
- C. Discuss selection process for Superintendent position for [school year].

- D. Discuss selection by the Governing Board of seven community residents to serve on district advisory committee.
- E. Announcements.
[List announcements]

VII. PUBLIC COMMENT PERIOD

Public comment on any item of interest to the public that is within the Board's jurisdiction will be heard. The Board may limit comments to no more than ____ minutes pursuant to Board policy. Public comment will also be allowed on each specific agenda item prior to Board action thereon.

VIII. CONSENT CALENDAR

Items listed under the Consent Calendar are considered to be routine and are acted on by the Board of Trustees in one motion. There is no discussion of these items before the Board vote unless a member of the Board, staff, or public requests specific items be discussed and/or removed from the Consent Calendar. It is understood that the Administration recommends approval on all Consent Items. Each item on the Consent Calendar approved by the Board of Trustees shall be deemed to have been considered in full and adopted as recommended.

- A. Routine business transactions, annual renewal of programs, bids, agreements, notices of public hearings, and proclamations:
 - 1. Approve minutes of the Regular Meeting held on [day, month, year].
 - 2. Approve budget and expense transfers for [list budget and expense transfers].
 - 3. Approve current invoices for payment of [list invoice payments].
- B. Certificated Personnel Items:
 - 1. Requests for Leaves of Absence.

The Governing Board is requested to approve the leave of absence, without pay, for the following personnel, effective as noted:
 - a. [name] [dates of absence]
 - 2. Resignations.

The Governing Board is requested to accept the resignations of the following personnel, effective as noted:

[List names of personnel and effect dates of each resignation].

3. Employments:

The Governing Board is requested to ratify/approve the employment of the following personnel, effective as noted:

[List names of personnel and effective dates of employment for each].

4. Other:

a. The Board of Trustees is requested to approve the following:

(1) Change in Status:

(a) [name, position, school], from temporary to probationary, effective [date, year];

(b) [name, position, school], transfer from [school/position/department] to [school/position/department]

C. Classified Personnel Items:

1. Request for Leaves of Absence: (same as above)

2. Resignations: (same as above)

3. Employments:

The Governing Board is requested to ratify/approve the employment of the following personnel, effective as noted:

a. [position], (New Temporary Position: 26.0 hours/week), [school], effective [date, year].

b. [position], (New Position: 8.0 hours/day), [school], effective [date, year].

4. Other:

The Governing Board is requested to approve the following:

- a. Supplemental Help: [position], (6.0 hours/week), [school], temporary through [date, year].
- b. Abandonment of Position: [Employee, #333-44-5555, [position], (Temporary Position), [school], effective [date, year].

IX. OLD BUSINESS

1. Report, discussion and possible board direction on district position on mitigation of school impact of future developments.
2. Second reading and request for final approval of Administrative Regulation No. 0000 (e): Student Disciplinary Policy.

X. NEW BUSINESS

1. ACTION ITEM: The Governing Board is requested to consider the recommendation of the administrative hearing panel for the possible readmission of the following students:

Student No. 123456 and Student No. 789101
2. ACTION ITEM: Request for adoption of Resolution No. 12345 – Approval of Lease Purchase Agreement for Two School Vans with Access Public Financing in the amount of \$48,000.
3. ACTION ITEM: Discussion and possible approval for upgrading the communication system for the resource center at [school/site].
4. ACTION ITEM: Approval of Amendment to Architect's Agreement for New Transportation Facility to reflect decreased scope of work.
5. ACTION ITEM: Discussion and possible approval of Change Order No. 5 for [name of project].
6. ACTION ITEM: Discussion and possible approval of employment contract with Superintendent [or specify other administration position].
7. DISCUSSION ITEM: Public hearing on CSEA initial proposal to the District for negotiations for the [school year].
8. DISCUSSION ITEM: Public hearing on CTA initial proposal to the District for negotiations for the [school year].

XI. ADVANCE PLANNING

A. Next meeting date:

[day, month, year], same location [specify if different location]

B. Suggested Future Agenda Items.

XII. ADJOURNMENT

Posted: [Date]

**SAMPLE TELECONFERENCE LANGUAGE
TO BE ADDED TO AN AGENDA WHERE THE MEETING
WILL BE CONDUCTED BY TELECONFERENCE**

This meeting is being conducted by teleconference at the following locations: [Identify all teleconference locations and which legislative body member will be participating from the teleconference location]. Each teleconference location is open to the public and any member of the public has an opportunity to address the City Council/School Board from a teleconference location in the same manner as if that person attended the regular meeting location. The City Council/School Board will control the conduct of the meeting and determine the appropriate order and time limitations on public comments from teleconference locations.

Notes:

- At least a quorum of the legislative body must participate from locations within the boundaries of the local agency.
- A copy of this agenda must be posted outside of each teleconference location.
- All votes taken during the meeting must be by roll.
- The teleconference location must be freely open to the public. If there are physical limitations on accessibility, a different location may need to be selected.
- The teleconference location must have sufficient audio capabilities so members of the public can hear the meeting and testify from each location.
- Posting the agenda at teleconference locations where members of the public can access them can prove challenging. It may be necessary to post the agenda at several locations within the vicinity of the teleconference location.

SAMPLE TELECONFERENCE SCRIPT AFTER THE MEETING IS CALLED TO ORDER

Mayor/Board President/Chairperson:

I would like to announce for the record that this meeting is being conducted pursuant to California Government Code Section 54953(b) concerning teleconferencing of meetings. Council/Board member _____ is participating in this meeting by speaker phone from _____ [*provide complete address*]. In accordance with the Brown Act, this location has been identified on the agenda for this meeting.

I would now like to ask Council/Board member _____ to respond to the following questions:

Are you able to hear our proceedings on this end?

Do you have a copy of the agenda for this meeting?

Has the agenda been posted at your location?

Is your location such that any member of the public could participate in the public portions of this teleconference meeting from your location?

Members of the Council/Board, are you able to hear Council/Board member _____?

Thank you. Because we are having a meeting with teleconferencing, all actions will be by a roll call vote.

APPENDIX 4

AGENDA ATTACHMENT
CLOSED SESSION
AGENDA DESCRIPTIONS

[Intentionally Blank]

AGENDA ATTACHMENT
CLOSED SESSION AGENDA DESCRIPTIONS

☐

(Check if
applicable)

Government Code Section 54956.7

LICENSE/PERMIT DETERMINATION

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

☐

(Check if
applicable)

Government Code Section 54956.75

AUDIT BY BUREAU OF STATE AUDITS

☐

(Check if
applicable)

Government Code Section 54956.8

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

☐

(Check if applicable)

Government Code Section 54956.81*

MEETING TO CONSIDER THE PURCHASE OR SALE OF PENSION FUND INVESTMENTS

Funds Under Consideration: _____
(Identify specific funds under consideration)

*The legislature does not provide safe harbor language for this closed session item. This text is provided based upon an extrapolation of the statute and equivalent safe harbor language for other closed sessions.

☐

(Check if applicable)

Government Code Section 54956.9(d)(1)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

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

☐

(Check if applicable)

Government Code Section 54956.9(d)(1)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Case Name

Unspecified: (check one)

_____ Disclosure would jeopardize service of process

_____ Disclosure would jeopardize existing settlement negotiations

☐

(Check if applicable)

Government Code Section 54956.9

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Litigation Pursuant to Paragraph (2) or (3) of Subdivision (d) of Section 54956.9

(Specify number of potential cases)

(Specify existing facts and circumstances that might lead to litigation on the agenda or orally announce them prior to closed session when known to a potential plaintiff, and make a record of a threat of litigation public and available for inspection as may be required by Government Code §§ 54956.9(e)(2) and (e)(5).)

☐

(Check if
applicable)

Government Code Section 54956.9

CONFERENCE WITH LEGAL COUNSEL –
ANTICIPATED LITIGATION

Initiation of Litigation Pursuant to Paragraph (4) of Subdivision (d) of
Section 54956.9 (Deciding Whether to Initiate Litigation):

(Specify number of potential cases)

☐

(Check if
applicable)

Government Code Section 54956.95

LIABILITY CLAIMS

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

Agency Claimed

Against: _____
(Specify name)

☐

(Check if
applicable)

Government Code Section 54956.96

CONFERENCE INVOLVING A JOINT POWERS AGENCY
(Specify name of JPA)

Discussion Will Concern: _____
(Specify closed session description used by the JPA.)

Name of Local Agency

Representative on JPA Board: _____
(Specify name.)

Additional Information: _____
(List the names of agencies or titles of
representatives attending the closed session as
consultants or other representatives.)

☐

(Check if
applicable)

Government Code Section 54956.97

PUBLIC BANK GOVERNING BOARD/COMMITTEE MEETING:

_____ To consider a loan or investment decision.

_____ To consider a decision of the internal audit committee
or governance committee.

_____ To meet with a state or federal regulator.

☐

(Check if
applicable)

Government Code Section 54957

PUBLIC EMPLOYEE APPOINTMENT/EMPLOYMENT

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

☐

(Check if
applicable)

Government Code Section 54957

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

☐

(Check if
applicable)

Government Code Section 54957

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/
RELEASE/COMPLAINT

☐

(Check if applicable)

Government Code Section 54957; Education Code Section 32281

THREAT TO PUBLIC SERVICES OR FACILITIES;
CONSIDERATION OF TACTICAL RESPONSE PLAN

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

☐

(Check if applicable)

Government Code Section 54957.6*

CONFERENCE WITH LABOR NEGOTIATORS

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

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

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

* Conferences between a public school employer and its negotiator are exempt from the Brown Act. (Government Code section 3549.1)

☐

(Check if applicable)

Government Code Section 54957.8

MULTIJURISDICTIONAL LAW ENFORCEMENT AGENCY
CASE REVIEW/PLANNING

☐

(Check if applicable)

Government Code Sections 37606, 37624.3 and 54956.87; Health and Safety Code Sections 1461, 1462, 32106, and 32155

HOSPITAL MEDICAL AUDIT COMMITTEE, QUALITY ASSURANCE COMMITTEE, CERTAIN ACTIONS BY HOSPITAL BOARD OF DIRECTORS, CERTAIN ACTIONS BY HEALTH PLAN GOVERNING BOARDS

_____ 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)

☐

(Check if applicable)

Government Code Sections 54956.86

CHARGE OR COMPLAINT INVOLVING HEALTH CARE INFORMATION PROTECTED BY FEDERAL LAW

☐

(Check if applicable)

Education Code Sections 35146, 48900 et seq., 48912(b) and 49060 et seq., and 20 U.S.C. Section 1232g

STUDENT DISCIPLINE OR OTHER CONFIDENTIAL STUDENT MATTERS

☐

(Check if applicable)

Education Code Section 49070

CONSIDERATION OF STUDENT RECORDS CHALLENGE

APPENDIX 5

CHECKLIST ON ACTION AND VOTE DISCLOSURE AFTER CLOSED SESSION

[Intentionally Blank]

CHECKLIST ON ACTION AND VOTE DISCLOSURE IN OPEN SESSION AFTER CLOSED SESSIONS

AGREEMENTS CONCLUDING REAL ESTATE NEGOTIATIONS (GOV. CODE, § 54957.1(a)(1))

When Generally: After agreement is final.

If Legislative Body Action Finalizes Agreement:

What to Report:

- 1) the approval action;
- 2) the voting tally;
- 3) the substance of the agreement.

When to Report:

- 1) after the closed session;
- 2) in open session;
- 3) during the same meeting.

If Other Party Must Finalize Agreement:

What to Report/Disclose:

- 1) no report is required; however, after the agreement is finalized by the other party and, upon inquiry by any person, disclose:
 - a) the approval action;
 - b) voting tally;
 - c) the substance of the agreement.

When to Disclose:

- 1) as soon as other party informs legislative body of its approval and upon inquiry.

ACTIONS AFFECTING EMPLOYMENT STATUS OF PUBLIC EMPLOYEES (GOV. CODE, § 54957.1(a)(5))

What to Report:

- 1) any action taken to:
 - a) appoint;
 - b) employ;
 - c) dismiss;
 - d) accept the resignation of, or
 - e) otherwise affect employment status of public employee.
- 2) voting tally;
- 3) title of position;
- 4) any change in compensation.

When to Report:

- 1) if dismissal or non-renewal of employment contract is subject to further administrative remedies:
 - a) report deferred until first public meeting following exhaustion of administrative remedies, if any.
- 2) all other employment actions report:
 - a) after the closed session;
 - b) in open session;
 - c) during the same meeting.

Note: Contracts of employment for city managers, superintendents, and similar positions must be ratified in open session.

**DISPOSITION OF JOINT
POWERS AGENCY CLAIMS
(GOV. CODE, § 54957.1(a)(4))**

What to Report:

- 1) voting tally;
- 2) name of claimant;
- 3) name of local agency claimed against;
- 4) substance of claim;
- 5) monetary amount approved by payment
imant, if any.
and agreed upon by the claimant, if any.

When to Report:

- 1) 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.)

**APPROVAL OF AGREEMENTS
CONCLUDING LABOR
NEGOTIATIONS
(GOV. CODE, § 54957.1(a)(6))**

What to Report:

- 1) the item approved;
- 2) voting tally;
- 3) other party.

When to Report:

- 1) after agreement is final, and
- 2) 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
(GOV. CODE, § 54957.1(a)(2))**

What to Report:

- 1) the approval action;
- 2) voting tally;
- 3) adverse parties (if known);
- 4) substance of the litigation.

When to Report:

- 1) after closed session;
- 2) in open session;
- 3) during same meeting.

**PENSION FUND INVESTMENT
TRANSACTION DECISIONS
(GOV. CODE, § 54957.1(a)(7))**

What to Report:

- 1) the investment transaction decision;
- 2) voting tally (must be by roll call vote).

When to Report:

- 1) first open meeting of the legislative body
held after the earlier of either:
 - a) the close of the investment transaction;
 - b) the transfer of pension fund assets
for the investment transaction.

**APPROVAL OF PENDING
LITIGATION SETTLEMENTS
(GOV. CODE, § 54957.1(a)(3))**

When Generally:

After settlement is final

If Legislative Body Action Finalizes:

What to Report:

- 1) the acceptance action;
- 2) voting tally;
- 3) substance of agreement.

When to Report:

- 1) after closed session;
- 2) in open session;
- 3) during same meeting.

If Other Party or Court Finalizes:

What to Report/Disclose:

- 1) no report is required; however, after the agreement is finalized by the other party or the court and, upon inquiry by any person, disclose:
 - a) the fact of approval action;
 - b) voting tally;
 - c) substance of agreement.

When to Disclose:

- 1) As soon as other party informs legislative body of its approval and upon inquiry.

**APPROVAL GIVEN TO INITIATE OR
INTERVENE IN LITIGATION
(GOV. CODE, § 54957.1(a)(2))**

Before Action Has Been Commenced:

What to Report:

- 1) direction to initiate/intervene given;
- 2) voting tally;
- 3) the action, defendants, and other particulars to be disclosed only:
 - a) upon inquiry; and,
 - b) once action formally commenced, unless disclosure jeopardizes process service/ conclusion of settlement negotiations.

When to Report:

- 1) after closed session;
- 2) in open session;
- 3) during same meeting.

After Action Formally Commenced:

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

What to Disclose:

- 1) the approval action;
- 2) voting tally;
- 3) defendant(s);
- 4) other particulars, presumably including substance of litigation.

When to Disclose:

- 1) upon inquiry.

**If Disclosure Jeopardizes Service of Process/
Existing Settlement Negotiation Conclusion:**

What to Disclose:

- 1) No disclosure required until process served/ settlement negotiations concluded.

Thereafter, disclose:

- a) the approval action;
- b) voting tally;
- c) defendant(s);
- d) other particulars, presumably including substance of litigation.

When to Disclose:

- 1) No disclosure required until process served/
settlement negotiations concluded;
thereafter, disclosure required only
upon inquiry.

APPENDIX 6

**SAMPLE
CLOSED SESSION NOTICES
TO EMPLOYEE**

[Intentionally Blank]

**[Sample Closed Session Notice to Employee
Pursuant to Government Code Section 54957]**

NOTICE

[Date]

Mr. Joe Worker
554 South Maple
Anytown, California 93700

Dear Mr. Worker:

You are hereby notified that the Anytown City Council will, on May 1, 20__, at 7:00 p.m., meet in closed session to hear specific complaints brought against you regarding [specify nature of complaint or issue]. However, pursuant to Government Code section 54957, you have the right to have such complaints heard in open public session of the Council rather than in a session closed to the public. You may have the complaints heard in open session by making such request in writing delivered to the undersigned at the address shown on this letterhead at any time before May 1, 20__.

A copy of the complaints against you as made by Mr. Citizen is attached to this notice.

Yours truly,

[Title]

Enclosures

[Notes on use of sample: There may or may not be written complaints or charges to attach to the notice. The employee's right to an open meeting applies to both formal and informal charges or complaints whether filed by the agency itself or by a private party. The requirement also applies to closed session hearings before civil service and personnel commissions. The notice must be delivered to the employee personally or by mail at least 24 hours before the time for holding the session, otherwise any disciplinary action taken is null and void. (Government Code section 54957.)]

[Because of the importance of documenting timely service, a proof of service form should be signed by the person mailing or personally serving the employee.]

**[Sample Closed Session Notice to Employee
Pursuant to Government Code Section 54957]**

NOTICE

[Date]

Mr. Joe Worker
554 South Maple
Anytown, California 93700

Dear Mr. Worker:

You are hereby notified that the Anytown School Board will, on May 1, 20__, at 7:00 p.m., meet in closed session to hear specific complaints brought against you related to a criminal matter you may have been involved in. However, pursuant to Government Code section 54957, you have the right to have such complaints heard in open public session of the Board rather than in a session closed to the public. You may have the complaints heard in open session by making such request in writing delivered to the undersigned at the address shown on this letterhead at any time before May 1, 20__.

Yours truly,

[Title]

Enclosures

[Notes on use of sample: The employee's right to an open meeting applies to both formal and informal charges or complaints whether filed by the agency itself or by a private party. The requirement also applies to closed session hearings before civil service and personnel commissions. The notice must be delivered to the employee personally or by mail at least 24 hours before the time for holding the session, otherwise any disciplinary action taken is null and void. (Government Code § 54957.)]

[Because of the importance of documenting timely service, a proof of service form should be signed by the person mailing or personally serving the employee.]

APPENDIX 7

**GUIDELINES FOR
CONDUCTING ORDERLY
LEGISLATIVE BODY MEETINGS**

[Intentionally Blank]

GUIDELINES FOR CONDUCTING ORDERLY LEGISLATIVE BODY MEETINGS

GENERAL RULE OF CONDUCT FOR LEGISLATIVE BODY MEETINGS:

All legislative body meetings and hearings shall be conducted in an orderly, efficient manner, without willful disruption by any person(s) in attendance. These guidelines apply to all legislative body meetings and hearings, whether conducted by the legislative body or by a designee of the legislative body such as an administrative panel, and whether conducted in closed or open session.

PROCEDURE FOR DEALING WITH DISRUPTION:

In order to prevent disruption, the legislative body has the right to request that any person immediately stop the following conduct: (1) willfully disrupting a meeting, (2) interrupting a person who is addressing the legislative body, or (3) preventing the legislative body from attending to the purpose of a meeting.

A. Initial Disruption. The chairperson of the meeting or hearing should immediately address the person, stating the following (or similar admonition):

“Excuse me, your actions are having the effect of disrupting this meeting [or hearing]. I am asking you to immediately stop [specify objectionable behavior, such as shouting, or interrupting, etc.] so that we can continue with the business of this meeting.”

B. Second Warning. If a person refuses to stop the objectionable behavior, the chairperson should repeat the request to stop, and emphasize that the person will be asked to leave if the behavior continues. It should also be stated that the meeting or hearing will continue in the person’s absence after he/she leaves. The following is appropriate:

“I must repeat that your actions are disruptive, and remind you of the request for you to stop your behavior. If you do not immediately cease, you will be asked to leave. The meeting will then continue only after you have left the room.”

C. Order the Person to Leave. If the person refuses to stop after the second warning, he/she should be asked to leave, by stating the following:

“You have been warned twice that you are disrupting this meeting and have been told to immediately stop your disruptive actions. Since you have chosen to disregard this request and continue being disruptive, I am ordering you to leave this meeting immediately.”

D. If the Person Refuses to Leave. If the person refuses to leave, he/she can be escorted from the room, assuming that this can be accomplished without resulting in physical injury to legislative body members or others in the room. If this cannot be accomplished by those already present, the police can be summoned.

E. Emptying the Room. The legislative body also has the right, in cases of extreme disruption involving one or more persons, to order the room cleared of all members of the public (except for members of the press who have not caused the disruption, if any are present). In such cases, the legislative body can continue with the meeting or hearing on matters appearing on the agenda. The mayor or chairperson should state:

“All members of the public must immediately leave the room. The legislative body will proceed with its meeting [hearing] on items on the agenda.”

[Intentionally Blank]

APPENDIX 8

**PUBLIC RECORDS ACT
FUNDAMENTALS**

[Intentionally Blank]

PUBLIC RECORDS ACT FUNDAMENTALS

Because public agencies exist for the purpose of handling public business, their daily operations are subject to a level of transparency. The Legislature enacted the California Public Records Act, Government Code at Sections 6250 et seq. to address this need for transparency. The Public Records Act is often confused with the federal Freedom of Information Act which only applies to federal agencies. (5 U.S.C. § 552 et seq.) The Public Records Act applies to local agencies, including cities, counties, special districts, school districts and community college districts. (Government Code § 6252.)

1. All Records Maintained by a Public Agency are Open to Inspection and Disclosure Absent an Exemption.

The overall principle of the Public Records Act is that all records maintained by a public agency that deal with public business are open to inspection and subject to disclosure, unless an exemption applies.

“Public records” are defined broadly as “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.” (Government Code § 6252 (e).)

“Writing” can mean almost anything: photocopies; handwritten notes; letters; reports; recorded sounds; digital storage; electronic mail; facsimiles; photographs, etc. (Government Code § 6252(g).)

The California Supreme Court has clarified that electronic communications sent to or from a public official’s private account and/or private device may constitute a public record if the communication addresses substantive business of the public agency. (*City of San Jose et al. v. Superior Court* (2017) 2 Cal.5th 608.) The court explained that “[i]f public officials could evade the law simply by clicking into a different email account, or communicating through a personal device, sensitive information could routinely evade public scrutiny.”

Any “person” including non-citizens, corporations, partnerships, and other businesses, can obtain records. (Government Code § 6252(c).) However, requests for records must be reasonable and describe an identifiable record. (Government Code § 6253(b).) Agencies are required to assist members of the public in identifying records. (Government Code § 6253.1; *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th 1385.)

2. The Agency Must Promptly Respond to a Request for Records.

The public agency must make public records open to inspection at all times during office hours. The agency can adopt reasonable rules of access to protect the safety of the records from theft and damage, and to prevent inspection from disrupting the operation of the agency. (*Bruce v. Gregory* (1967) 65 Cal.2d 666.) The public agency may refer a member of the public to the agency’s Internet Website if the record is posted there. (Government Code § 6253(f).)

The public agency must respond to a request to obtain a copy of a public record promptly. What is prompt will depend upon the request. The maximum time is 10 calendar days absent unusual circumstances. (Government Code § 6253(c).) The response may be:

- Disclosure of the record.
- That the records are discloseable and will be produced by a certain time (promptly).
- That the records are exempt from disclosure and will not be produced.
- That the request does not contain reasonably identifiable records. Prior to making this response, the agency must assist the person requesting the records to help the person identify the records. This is accomplished by opening a dialog with the person to determine what the person is seeking and to explain what records the agency has. (Government Code § 6253.1.)

Important Note: Form 700 Statements of Economic Interest must be made available for inspection and copying as soon as practicable, and in no event later than two business days after the statement is received by the filing agency. Filing officials must therefore make sure the Form 700 statements are readily available. (Government Code § 81008.)

The agency does not have to create a new record to meet the request. Exact copies of the record must be provided unless impracticable to do so. If part of a record is exempt, the agency must disclose all reasonably segregable non-exempt portions. (Government Code § 6253(a); *ACLU v. Dukemajian* (1982) 32 Cal.3d 440.) If a document is requested in electronic format and exists in that format, it must be provided in electronic format. (Government Code § 6253.9; 88 Ops.Cal.Atty.Gen. 153 (2005).)

Denial of a request for records must be in writing and must set forth the names and titles or positions of each person responsible for the denial. (Government Code §§ 6253(d) and 6255.)

Unusual circumstances means: (1) the need to search for and collect records from facilities separate from the office processing the request; (2) the need to search for, collect, and examine a voluminous amount of separate and distinct records; (3) the need for consultation with another agency having substantial interest in the determination; (4) the need to compile data, to write programming language, or to construct a computer report to extract the data. (Government Code § 6253(c).)

The maximum extension to respond to a records request is 14 days. (Government Code § 6253(c).)

3. Common Exemptions.

The following is a list of the most commonly used exemptions for disclosure of records. If the public agency discloses a public record that is otherwise exempt from disclosure to any

member of the public, that disclosure generally constitutes a waiver of the exemption. (Government Code § 6254.5.)

Public Records Act Exemptions:

- Preliminary drafts and notes not kept in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure. (Government Code § 6254(a).)
- Documents pertaining to pending litigation to which the agency is a party. (Government Code § 6254(b).) Deposition transcripts are not subject to the pending litigation exemption because they are generally available to the public pursuant to the Code of Civil Procedure section 2025.570. (*Board of Trustees v. Super. Ct.* (2005) 132 Cal.App.4th 889.)
- Personnel, medical, or similar files, the disclosure of which would constitute an invasion of personal privacy. (Government Code § 6254(c).) Public employee salaries and benefits do not fall into this category. The home addresses and telephone numbers of employees do. (*United States Department of Defense v. Federal Labor Relations Authority* (1994) 114 S.Ct. 1006, 1015-106, 510 U.S. 487, 501-502; *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Super. Ct.* (2007) 42 Cal.4th 319, 339; *Sonoma County Employees' Retirement Association v. Superior Court* (2011) 198 Cal.App.4th 986.)
- Police investigative reports, except that certain information contained therein must be disclosed. (Government Code § 6254(f).) Beginning 2019, Penal Code § 832.7 was amended to state that, notwithstanding Government Code § 6254(f), investigative files involving the following four categories are public records: (1) an incident involving the discharge of a firearm at a person by an officer; (2) an incident involving use of force by an officer that results in serious bodily injury or death; (3) an incident involving a sustained finding, as defined by Penal Code § 832.8, of sexual assault; and (4) an incident involving a sustained finding, as defined by Penal Code § 832.8, of falsification.
- Test questions, scoring keys, and other examination data used to administer licensing examination, examination for employment, or academic examination. (Government Code § 6254(g).)
- Library circulation records. (Government Code § 6254(j).)
- Records prohibited from disclosure by federal or state law. (Government Code § 6254(k).)
- Certain individual financial information. (Government Code §§ 6254(i), (n), (o).)
- Home addresses of state and school district employees, judges and certain elected and appointed officials. (Government Code §§ 6254(u), 6254.3, 6254.21.)

Public Records Act Catchall Exemption/Balancing Test:

- The agency may refuse to disclose a public record if the agency determines that “on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” (Government Code § 6255(a).)
- The exception should be used cautiously. Case law requires the agency to prove that there is a “clear overbalance” on the side of confidentiality. (*California State University, Fresno Association, Inc. v. Super. Ct.* (2001) 90 Cal.App.4th 810.) This is a high standard to meet.

Juvenile and Student Records:

- Law enforcement records involving juveniles may not be disclosed to the public absent a court order. A subpoena prepared and served by an attorney is not enough. There are certain exceptions for releasing the records to other agencies that have a need for the information. (Welfare and Institution Code §§ 825 -830.1; Government Code §§ 6276.46, 6276.48; Cal. Rules of Court, rule 5.552; *Wescott v. County of Yuba* (1980) 104 Cal.App.4th 103.)
- Student records are exempt from disclosure pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C., §§ 1232g et seq., and the California Education Code §§ 49073 et seq. and 76240 et seq. Generally, no production of student records is allowed absent parental consent or a court order. A properly issued subpoena, prepared and served by an attorney, will suffice. (34 C.F.R., § 99.31(a)(9).)

4. The Agency May Only Charge Its Actual Duplication Costs or Statutory Fee.

Agencies may charge for their duplication costs as a condition of providing copies of non-exempt records. This includes only copying costs per page. It does not include employee time to locate and assemble the records. (Government Code § 6253(b).) The agency may ask for these costs before making the copies. If the Legislature has enacted a statutory fee for obtaining copies of the record, that fee will control, provided it is reasonable. If a citizen requests an electronic document and the request “would require data compilation, extraction, or programming to produce the record” the citizen must bear the costs of producing the record. (Government Code §§ 6253.9(b)(2), 81008.)

5. The Remedy for Violations is an Order Compelling Disclosure and Attorneys’ Fees.

An aggrieved person may bring an action for a writ of mandate, injunction or declaratory relief to compel disclosure of the records. All such proceedings are expedited so that a decision is made at the earliest possible time. A prevailing plaintiff is entitled to attorneys’ fees. A prevailing defendant only if the action is clearly frivolous. (Government Code §§ 6258, 6259; *Garcia v. Governing Board of Bellflower Unified School District* (2013) 220 Cal.App.4th 1058.)

APPENDIX 9

**ETHICS IN PUBLIC SERVICE
FUNDAMENTALS**

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ETHICS IN PUBLIC SERVICE FUNDAMENTALS

The rules governing ethics are designed to ensure open government and fairness. The rules are complex, and sometimes technical. New rules are adopted every year. The purpose of these “Ethics In Public Service Fundamentals” is to summarize the basic ethics principles, alert public officials to issues they need to be aware of, especially legislative body members, and to learn to know when to ask questions; this is not intended to be a comprehensive summary or review of all applicable laws. If a red flag is raised, the reader is urged to consult with the applicable regulating authority, such as the Fair Political Practices Commission or California Attorney General’s Office, or seek legal counsel. There are also a multitude of resources on ethics and conflicts of interest available on the internet from the following organizations:

- Institute for Local Government, www.ca-ilg.org. (The ILG prepared a number of publications on public service ethics.)
- California Fair Political Practices Commission, www.fppc.ca.gov. (The FPPC created numerous Fact Sheets.)
- California Attorney General, www.ag.ca.gov/publications. (The AG prepared a Conflict of Interest Publication last updated in 2010.)
- California School Boards Association, www.csba.org. (The CSBA prepared a July 2010 Fact Sheet on Conflict of Interest for governing board members.)

Some local officials are required to receive biennial ethics training. These include elected and appointed officials of local agencies who receive compensation or reimbursement for expenses incurred as part of their official duties. Currently local agencies required to receive the training include cities, counties, and special districts, but not school districts. (Government Code §§ 53234, 53235.) Many local agencies require training for all officials that file Form 700 Statement of Economic Interests.

We recommend that training be provided for all locally elected officials, appointed members of boards and commissions that have decision making authority or whose advisory recommendations are regularly accepted, and anyone with significant decision making authority, especially those having authority over financial matters and contracts for construction, goods or services. These individuals are usually the ones who file the Form 700. We also recommend the training for school districts. Our Firm regularly provides public agency ethics training and we can tailor the training to specific agency needs.

1. Be Alert to Decisions That May Have a Economic Effect.

The California Political Reform Act, Government Code section 87100 et seq., and 2 California Code of Regulations section 18700 et seq., sets forth the rules governing financial conflicts of interest. Public officials, both at the state and local level, may not participate in a decision if the official’s financial interests might be materially affected by the decision.

Participation includes using the official's position to influence the decision. (Government Code § 87100; 2 California Code of Regulations §§ 18700 - 18702.5.)

There are five types of economic interest to be concerned with from which a conflict may arise:

- Business entities, including an investment of \$2,000 or more, an employee, or management. (Government Code § 87103; 2 California Code of Regulations § 18702.1.)
- Real property interest of \$2000 or more. A conflict of interest is presumed if the official owns or leases residential property within 1,000 feet of the boundaries of the property subject to the decision. For commercial property interests, the business entity rules apply. (Government Code § 87103; 2 California Code Regulations § 18702.2.)
- Sources of income, including a spouse's income, of \$520 or more within the preceding 12 months. (Government Code § 87103; 2 California Code of Regulations § 18702.3.)
- Sources of gifts of \$520* or more within the preceding 12 months. (Government Code § 87103; 2 California Code of Regulations § 18702.4.)
- Personal financial effect, including effect on spouse or immediate family member, such as a loan, of \$250 or more within any 12-month period. (Government Code § 87103; 2 California Code of Regulations § 18702.5)

A conflict of interest will exist with regard to a particular government decision if it is sufficiently likely that the outcome of the decision will have an important impact on an individual's economic interest and a significant portion of the jurisdiction does not also feel the important impact on their economic interests. The impact can be positive or negative. (2 California Code of Regulations §§ 18703 et seq.)

2. [If a Conflict of Interest Exists Do Not Participate and Disclose.](#)

If a public official has a disqualifying conflict of interest, the official must refrain from any participation in the decision making process. This includes discussing with or attempting to influence staff or colleagues. (2 California Code of Regulations §§ 18700, 18704, et seq.)

Legislative body members must identify the nature of the conflict in open session and leave the room prior to the legislative body taking action on the item. If the item is on the

* \$520 is the number in effect at the time of preparation of this Handbook. The number is adjusted on a biennial basis.

consent calendar the legislative body member need not leave the room. (Government Code § 87105; 2 California Code of Regulations § 18707.)

A public official may speak as a member of the public even if the official has a personal interest in the matter, but must leave the dais and speak as a member of the public. (Government Code § 87105; 2 California Code of Regulations § 18707(a)(3)(c).)

3. [If Any Member of the Legislative Body Has a Financial Interest in a Contract, the Agency May Not Enter into That Contract.](#)

Government Code section 1090 prohibits public officials from being financially interested in contracts. It prohibits participating in the development, negotiation, or execution of the contract and applies to both oral and written contracts. If any member of a legislative body has a financial interest in the contract, the legislative body may not enter into the contract. Abstention does not cure the conflict.

This rule applies to employees that have contract authority. Employees may not negotiate or enter into a contract if the employee has a financial interest in the contract. (*Los Angeles Memorial Coliseum Commission v. Insomniac, Inc.* (2015) 233 Cal.App.4th 803.)

There are exceptions for “remote interests” as defined by statute and essential goods and services, provided the official recuses him or herself and does not directly or indirectly participate in the making of the contract. (Government Code §§ 1091; 69 Ops.Cal.Atty.Gen. 102 (1986).) The remedy for violating Section 1090 is harsh: the contract is void and unenforceable, the public official faces criminal charges, and if convicted the official is forever banned from holding public office. (Government Code §§ 1092, 1097.)

4. [Public Officials Should Not Negotiate for Future Employment with Someone That Is Doing Business with the Agency.](#)

Public officials may not participate in decisions involving future employers. This applies whenever the official is negotiating or has an arrangement concerning prospective employment. (Government Code § 87407.) Thus, public officials who are negotiating for future employment automatically disqualify themselves from participating in any decisions involving that future employer.

5. [Be Aware of Gifts, Including Tickets to Events and the Payment of Travel Expenses, from Any Source That Totals \\$520* or More.](#)

Public officials need to be aware of receiving gifts. Gifts do not always have bows, and can include meals, tickets to events, and travel expenses. Given the number of rules and complexities revolving around the gift rules, the rules are presented here only in general terms.

Elected officials and executive heads of public agencies, as well as those officials with significant decision making authority, need to be aware of gifts from all sources. For others, they should be aware of gifts from sources that do business with the agency.

There are three concepts to be aware of: disqualification; reporting; and prohibition.

- Disqualification: The threshold for disqualification, as noted above, is \$520* from a single source in any 12-month period.
- Reporting: The threshold for reporting gifts on the Form 700 Statement of Economic Interests is \$50 from a single source in any calendar year.
- Prohibition: The threshold for a prohibition on receiving gifts is \$520* from a single source in any calendar year.

There are various exceptions to the gift reporting and prohibition rules. These include: gifts from family members; gifts exchanged among friends at holidays and birthdays as long as not disproportionate in value; gifts from persons in dating relationships; bereavement offerings, acts of neighborliness and human compassion; and wedding gifts. Wedding gifts must be reported at 50% value, but there is no limit. Further, gifts not used and returned within 30 days, donated to the public agency or a non-profit organization, or for which the official reimburses the donor the fair market value of the gift, are not reportable.

(Government Code §§ 82028, 87207, 89503; 2 California Code of Regulations § 18940 et seq.)

Public agencies should adopt local policies regarding the acceptance of gifts, tickets, and travel expenses. (Government Code § 53232 et seq., 89506; 2 California Code of Regulations §§ 18944, 18944.1, 18950 et seq.)

Note: elected and non-elected officials cannot accept free or discounted transportation from transportation carriers. (Cal.Const.Art. XII, § 7.) The rule does not apply to employees. Whether one is an “employee” or an “appointed official” is sometimes subject to debate. Generally, appointed members of boards and commissions as well as department heads should be considered appointed officials. There is no distinction for personal or public business and the penalty is forfeiture of office.

6. [Do Not Use Agency Resources for Personal Benefit.](#)

The personal or political use of public resources is prohibited. This includes staff time and agency equipment, and includes the support or opposition of candidates or local ballot measures. Authorized expenditures should be made pursuant to the agency’s reimbursement policy and may only be for actual and necessary expenses. A misuse of public funds will occur when it is not authorized or for a public purpose, or when personal benefit is not merely incidental. (Penal Code § 424; Government Code § 8314; 2 California Code of Regulations § 18901.1; *Stanson v. Mott* (1976) 17 Cal.3d 206.)

7. [Timely Complete Form 700 Statement of Economic Interest Disclosure Forms.](#)

The filing of a Form 700 Statement of Economic Interest requires public officials to disclose economic interests that might give rise to a disqualifying conflict of interest. It provides the public with the ability to ensure its elected and appointed officials are free from bias. The Form 700 should be filed upon assuming office, annually while in office, upon a change in position leading to a different reporting obligation, and upon leaving office. Each local agency is required to have its own local conflict of interest code that sets forth which officials and employees need to file. Elected officials and executive heads of agencies are statutorily required to file. (Government Code §§ 87200 et seq., 87300 et seq.; 2 California Code of Regulations §§ 18730 et seq.)

8. [Elected Officials Must Report Substantial Charitable Fundraising Efforts.](#)

Elected officials must disclose donations they solicit for charitable, legislative, or governmental purposes when the amount received amounts to \$5,000 or more from a single source in a calendar year. There is no disqualification, only a reporting obligation. (Government Code § 82015(b)(2)(B)(iii).)

9. [Avoid Bias in Decision Making.](#)

There is a common law prohibition against participating in decisions where personal loyalties are present. As a decision-maker, the public expects public officials to be impartial and avoid favoritism. Under the common law doctrine, “[A] public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.” (*Noble v. City of Palo Alto* (1928) 89 Cal.App. 47.) Such doctrine “strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.” (67 Ops.Cal.Atty.Gen. 369 (1984).)

The most common example of common law bias arises in the context of due process hearings. Public hearings must be conducted in accordance with due process principles. Public officials may not be tempted by their personal or financial interest even if there is no conflict under state law.

If a situation arises where a common law conflict of interest exists as to a particular transaction, the official must disqualify him or herself from taking any part in the discussion or vote regarding the particular matter. (26 Ops.Cal.Atty.Gen. 5 (1955).) The purpose of the conflict laws is to prevent even the appearance of impropriety. (*Thomson v. Call* (1985) 38 Cal.3d 633.)

10. [Do Not Hold Incompatible Offices and Avoid Incompatible Activities.](#)

Public officials may not simultaneously hold two public offices that are incompatible. Incompatibility is defined as a significant clash of duties or loyalties of office. Acceptance of the

second office results in a forfeiture of the first office. (Government Code § 1099.) Examples of incompatible offices include:

- City council member and school board member.
- Planning commissioner and school board member.
- City manager and school board member (but not the assistant city manager or city clerk).
- City council or county board of supervisor member and fire chief.
- Public utility district member and county board of supervisor member.

There is also a statutory prohibition on engaging in incompatible activities. (Government Code § 1125 et seq.). A “local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed.” (Government Code § 1126(a).)

Disclaimer:

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this document does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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