OPEN MEETING LAWS IN CALIFORNIA: RALPH M. BROWN ACT UPDATE

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I. INTRODUCTION, PURPOSE, AND SCOPE OF BROWN ACT

The Ralph M. Brown Act (the "Act"), codified as Government Code sections 54950 through 54963, is California's open public meeting law. It was first enacted in 1953 as good government reform to limit perceived and real backroom deal making and to make local government decision making more transparent to the public. The Brown Act is intended to facilitate public participation in all phases of local government decision-making and to curb misuse of the democratic process by secret legislation of public bodies. (*Chaffee v. San Francisco Library Commission* (2004) 115 Cal.App.4th 461.) The basic requirement of the Act is set forth at Government Code section 54953(a):

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

By adopting this legislation, the Legislature established a clear presumption in favor of public access to public meetings.

Even though the Act establishes broad public access rights to the meetings of "legislative" bodies, it also recognizes that under certain limited circumstances there is a legitimate governmental interest in closing some meetings to the public. Examples of such statutorily-authorized closed session topics include personnel issues, pending litigation, anticipated litigation, labor negotiations, real property acquisitions, and public security.

The Brown Act now covers virtually every type of local government body, elected or appointed, decision-making or advisory, permanent or temporary. Similarly, meetings subject to the Brown Act are not limited to formal gatherings but include communications by which a majority develops a "collective concurrence as to action to be taken." Even discussions among a majority of the legislative body are considered "meetings" if the discussion involves any item within the body's subject matter jurisdiction.

II. BODIES COVERED BY THE BROWN ACT

The Brown Act applies to "legislative bodies" of all local agencies in the State of California. "Legislative body" is defined in the Brown Act to include the governing body of a local agency (e.g., the board of directors) and any 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 the legislative body. "Standing committees" (even those consisting of less than a quorum of the body) are subject to the requirements of the Brown Act. Standing committees have either: (1) a continuing subject matter jurisdiction; or (2) a meeting fixed by charter, ordinance, resolution or other formal action of the legislative body. For example, if a governing body creates a long-term committee on a particular subject (e.g., finance, public safety, budget, etc.), such a committee would be considered a standing committee subject to the Brown Act. (Gov. Code § 54952(b).)

Also included as legislative bodies are any non-profit corporations created by the legislative body to exercise delegated authority or any non-profit that receives funding from the legislative body and to whose board the legislative body appoints one of its members (Gov. Code § 54952(c).)

Government Code section 54952 includes as a legislative body a limited liability company that is created by the legislative body to exercise delegated authority or that receives funding from the local agency and to whose board the legislative body appoints one of its members.

The Brown Act does not apply to ad hoc advisory committees composed solely of less than a quorum of the legislative body. Such committees shall not have "continuing subject matter jurisdiction" and do not have a meeting schedule fixed by formal action of a legislative body. Ad hoc committees generally serve only a limited or a single purpose, are not perpetual, and are dissolved once their assigned task is completed.

Committees that are not created by formal action of the legislative body are not covered. For example, if a staff member or a single member of a governing board creates an advisory group and it is not otherwise created by formal action, that committee is not covered by the Brown Act.

III. MEETING DEFINED

The Brown Act defines a meeting as "any congregation of a majority of the members of a legislative body at the same time and location, including teleconference locations 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." (Gov. Code § 54952.2(a).) This definition is extraordinarily expansive and essentially prohibits any deliberation among members of a legislative body on issues before that body other than at a scheduled public meeting.

However, there are six types of gatherings that are exempt from the provisions of the Brown Act. These exceptions are: (1) the individual contact exception; (2) the conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee attendance exception.

Unless a gathering of a majority of the members of a legislative body falls within one of these specified exceptions, if a majority of the members are in the same place and discussing any city business matter, such a gathering would be considered a meeting under the Brown Act.

A. EXCEPTIONS

1. Individual Contact Exception: The Act specifically allows individual contacts or conversations between a member of the body and any other person, providing such contract or conversation does not result in a serial meeting (defined below). (Gov. Code § 54952.2(c)(1).)

2. Conference Exception: The Act specifically allows the attendance of a majority of members at a conference or similar gathering, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency. (Gov. Code § 54952.2(c)(2).)

3. Community Meeting Exception: A majority of members may attend an open and publicized community meeting organized to address a topic of local concern without running afoul of the Act, as long as the agency did not organize the event and the members do not discuss among themselves, other than as part of the scheduled program, specific matters within the jurisdiction of the agency. (Gov. Code § 54952.2(c)(3).)

4. Other Legislative Body Exception: A majority of the members of a local legislative body may attend an open and noticed meeting of another body of the same agency, as well as an open and noticed meeting of another local agency, again with the caveat that they may not discuss among themselves, other than as part of the scheduled meeting, specific business within their jurisdiction. (Gov. Code § 54952.2(c)(4).) Thus, for example, the Brown Act does not prohibit a majority of a city's planning commissioners from attending an open and noticed meeting of the City Council.

5. Social or Ceremonial Occasion Exception: A majority can attend social or ceremonial events as long as they do not discuss among themselves specific business within the subject matter jurisdiction of their agency. (Gov. Code § 54952.2(c)(5).)

6. Standing Committee Attendance Exception: A majority of members may attend an open and noticed meeting of a standing committee of the body, provided that members of the body who are not members of the standing committee attend only as observers. (Gov. Code § 54952.2(c)(6).)

B. SERIAL MEETINGS

Although the Brown Act does not prohibit individual contacts or conversations between a member of a legislative body and any other person, the Brown Act does prohibit a series of such individual contacts if they result in a so-called "serial meeting." (Gov. Code § 54952.2(b).)

The Act expressly prohibits serial meetings, defined as "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 or the legislative body." (Gov. Code § 54952.2(b)(1).)

For example, a chain of communications (sometimes referred to as a "daisy chain" serial meeting) occurs in the following circumstance: Member A contacts member B. Member B then contacts member C. Member C then contacts Member D, and so on, until a majority of the members of the legislative body have participated in the discussion.

An example of the so-called "hub and spoke" serial meeting occurs when a staff person telephones members of a board one-by-one to discuss a proposed action, or a chief executive briefs board members prior to a formal meeting and, in the process, reveals information about the members' respective views. The Brown Act prohibits not only reaching a collective concurrence, but also any discussion by a majority of the legislative body members on any item that is within the legislative body's jurisdiction. The Brown Act does not, however, prevent an employee or official of the agency from having separate conversations with a majority of the legislative body outside of a meeting in order to answer questions or provide information to the members, as long as that person does not communicate the comments or positions of a member or members to a majority. (Gov. Code § 54952.2(b)(2).)

1. Individual Contacts Between Members of the Public and Board Members. Although Government Code 54952.2(c)(1) allows for individual contacts or conversations between a member of a legislative body and another person, it should be kept in mind that such individual contact should not be expanded in an effort to engage a majority of the legislative body in a discussion of any issue within the legislative body's jurisdiction. In other words, a member of the public should not act as an intermediary to relay among a majority of the members the members' positions or comments on topics within their subject matter jurisdiction.

2. Video Teleconferencing and Conference Telephone Calls. The prohibition against serial meetings specifically exempts video conferencing or teleconferencing meetings as long as they are conducted according to the procedures set forth in the Brown Act at section 54953(b). Such procedures require the following steps: (1) an agenda must be posted at all videoconference or teleconference locations; (2) each location must be identified in the notice and agenda of the meeting and must be accessible to the public, and (3) a quorum of the members of the legislative body must participate from within the boundaries of the agency's jurisdiction.

3. Writings as Meetings. Although generally distribution of written instruments does not constitute a meeting under the Brown Act, at least one court has determined that circulation of a proposal among board members for their review and signature did, in fact, constitute a meeting in violation of the Brown Act when a majority of the members of the legislative body signed the document.

4. E-mails. The Brown Act prohibits the use of "a series of communications of any kind . . . to discuss, deliberate or take action . . . ." (Gov. Code § 54952.2(b)(1).) Consequently, e-mails are subject to the Brown Act. The ease with which one can send an e-mail message may make it a particularly problematic trap for unwary public officials. A board member may send a message to a colleague about a matter that will be before the board. The recipient might forward it to a third board member, resulting in a serial meeting prohibited by the Brown Act. All may be acting without any intention of violating the Brown Act, and yet they may have done so. The e-mail string is also an electronic record of the violation. If a majority of the members of a legislative body either receive or reply to an e-mail, a serial meeting may result since the transmission of the members' ideas could be construed as a "discussion" under the Brown Act. This can easily occur when a member selects "reply to all" on a message sent from staff where that message contains discussion, deliberation, decisions or other content on any issue within the legislative body's jurisdiction.

IV. NOTICE AND AGENDA REQUIREMENTS

A. REGULAR MEETINGS

Each legislative body of a local agency, except for advisory committees or standing committees, must provide either by ordinance, resolution or bylaws the time and place for holding regular meetings.

1. Agenda Requirements. For regular meetings, the legislative body must post an agenda at least 72 hours prior to the meeting. The agenda must contain a brief general description of each item of business to be conducted, and must specify the time and location of the regular meeting. (Gov. Code § 54954.2(a).) The Brown Act provides that such descriptions of agenda items generally need not exceed 20 words, but should inform interested members of the public about what is under consideration, so that the public can determine whether it wishes to participate in the meeting. (Gov. Code § 54954.2(a)(1).)

The agenda must also include a notice informing the public that any writing that is a public record and relates to an open session agenda item that is distributed less than 72 hours prior to the meeting will be available for public inspection at City Hall. (Gov. Code § 54957.5.) If requested, the agenda shall be made available in appropriate formats to serve persons with disabilities, and the agenda must include information regarding how, to whom and when a request for disability accommodation may be made by a person with a disability who requires such accommodation in order to participate in the public meeting.

UPDATE: The agenda must be posted in a location freely accessible to members of the public, and on the agency's web site.

2. Exceptions to Agenda Requirements. The Brown Act provides that no action or discussion shall be undertaken on any item not appearing on the posted agenda except: (1) a member of a legislative body or its staff may briefly respond to statements made or questions posed by a person exercising public testimony rights under the public comment portion of the meeting; (2) a member of the legislative body, on his or her own initiative, or in response to questions posed by the public, may ask questions for clarification, make a brief announcement or make a brief report on his or her own activities; and (3) a member 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. (Gov. Code § 54954.2(a)(2).)

In addition, the legislative body may take action on items not appearing on the posted agenda if the body publicly identifies the item and one of the following three circumstances exists:

(a) A majority determines that an emergency exists as defined by Government Code section 54956.5 (discussed in more detail below).

(b) Two-thirds vote of the members of the body present or, if less than two-thirds of the members are present, a unanimous vote of those members present, determines 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.

(c) The item was previously posted for a prior meeting of the body that occurred 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. (Gov. Code § 54954.2(b).)

3. Public Testimony. The Brown Act provides that every agenda for a regular meeting must provide an opportunity for members of the public to address the legislative body on any item under the subject matter jurisdiction of the body. Encompassed in this provision are two types of public comment periods. One is a general comment period in which members of the public may comment on any item of interest that is within the body's subject matter jurisdiction and is not on the agenda. The other public comment period is with respect to any item on the agenda. Such comment periods on agenda items must be allowed to occur prior to or during the Council's consideration of the item. (Gov. Code § 54954.3(a).)

There is one exception to allowing public comment. This exception provides that the agenda need not provide an opportunity for members of the public to address the legislative body on any item that had 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 unless the item has been substantially changed since the committee heard the item as determined by the legislative body.

The legislative body is allowed to adopt reasonable regulations, including regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. (Gov. Code § 54954.3(b).)

B. SPECIAL MEETINGS

A special meeting may be called at any time by the presiding officer of the legislative body 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 stations requesting notice in writing. The notice must 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, which shall also specify the time and place of the special meeting and the business to be conducted. No other business shall be considered at special meetings. In other words, there cannot be any matters added to the agenda. In some instances written notice may be dispensed with as to any members of the legislative body. The call and notice must be posted 24 hours prior to the special meeting in a location freely accessible to members of the public. (Gov. Code § 54956.)

UPDATE: The notice must also be posted on the agency's web site.

UPDATE: Agencies may not agendize or discuss matters regarding local agency official salaries, salary schedules or compensation paid in the form of fringe benefits at a special meeting. The definition of "local agency officials" includes chief executive officers, deputy and assistant chief executive officers, department heads and officials who have an employment contract with the agency, and who are not members of a collective bargaining unit. General budget discussions may still be held at special meetings, however. (Gov. Code § 54956.)

C. EMERGENCY MEETINGS

As noted above, a legislative body may conduct an emergency meeting when there is an "emergency situation" requiring prompt action due to disruption or threatened disruption of public facilities without having to comply with the 24-hour notice requirement of a special meeting. (Gov. Code § 54956.5(b)(1).) The Brown Act defines "emergency situation" as work stoppage or 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; and a "dire emergency" as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring the legislative body to provide even one-hour notice before holding an emergency meeting may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body. (Gov. Code § 54956.5(a)(1).)

However, newspapers of general circulation, radio or television stations that have requested special meeting notices shall be notified by the presiding officer or designee one hour prior to the "emergency" meeting by telephone unless telephone services are not functioning. In the case of a "dire emergency," notice shall be given to the media at or near the time the presiding officer notifies members of the legislative body of the emergency meeting.

The legislative body may not meet in closed session during an emergency meeting, except pursuant to Government Code section 54957, which allows a closed session with law enforcement on specified security

matters if agreed to by a two-thirds vote of the members present at the emergency meeting or, if less than two-thirds of the members are present, by unanimous vote. (Gov. Code § 54956.5(c).)

UPDATE: D. PUBLIC REPORTING OF ACTIONS TAKEN IN OPEN SESSIONS

All legislative bodies must publicly report any action taken and the vote or abstention on that action of each member present for the action. "Action taken" is a collective decision made by a majority of the members upon a motion, proposal, resolution, order or ordinance, and may include decisions made by general consensus. The public announcement is in addition to the prior requirements of taking and recording attendance, and recording votes, in the minutes. The minutes should also clearly record whether any voting member leaves the meeting before adjournment or enters the meeting after the call to order.

Each time the legislative body takes action, the action should be by motion followed either (1) by a roll call vote with each vote or abstention individually recorded in the minutes or (2) following each vote, the Chair or Clerk of the legislative body (or other appropriate person) announcing the vote, including who voted which way. The Chair's or Clerk's statement should be substantially similar to the following and should be recorded in the minutes:

> "The Board voted on a motion to [describe action taken].
>
> The motion [carried/did not carry] by unanimous vote.
>
> -or-
>
> The following individuals voted in favor [list members]; the following members voted against [list members]; and [the following members abstained/no members abstained]. Based on this count, the motion [carried/did not carry]."

The same statement should be made where a decision, such as a direction to staff, is made by general consensus.

E. CLOSED SESSIONS

1. Agenda Requirements. Although closed sessions not open to the public may be conducted at regular or special meetings, there must still be notice of the closed sessions even if no action is contemplated.

The Brown Act provides certain "safe harbor" provisions or model formats for describing closed session matters. Substantial compliance with these "safe harbor" provisions satisfies agenda description requirements. (See Gov. Code § 54954.5.)

2. Oral Announcement Prior to Closed Session. The Brown Act also requires an oral announcement of the items to be discussed in closed session prior to adjourning to closed session. In some instances, the Brown Act only requires a reference to the item as it appears on the agenda. In other situations, the Brown Act requires additional information and describes the types of announcements which must be made. However, these provisions do not require the disclosure of privileged or confidential communications exempt from disclosure under the Public Records Act.

3. Report at the Conclusion of Closed Sessions. The Brown Act requires that a legislative body reconvene in open session after conducting a closed session. If certain types of action are taken in closed session and under certain specified circumstances, the legislative body is to report the action taken and the vote, subject to limited exceptions. (See Gov. Code § 54957.1.)

E. ADJOURNMENTS AND CONTINUANCES

The Brown Act provides that a legislative body 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 adjourn such meetings and if all members are absent, the clerk or secretary of the legislative body may declare the meeting adjourned and must provide written notice of the adjournment in the same manner as for special meetings. A copy of the order or notice of adjournment must be 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. (Gov. Code § 54955.)

A duly noticed hearing may also be continued or recontinued in the same manner as adjourned meetings. However, if a meeting is continued to a time less than 24 hours after the time specified in the original notice, a copy of the notice of continuance must be posted immediately following the meeting in which the continuance was adopted. (Gov. Code § 54955.1.)

F. LOCATION OF MEETINGS

Regular or special meetings of the legislative body must be held within the boundaries of the territory over which the local agency exercises jurisdiction. In other words, a city council meeting must be within the city, county board of supervisors must be within the county, and boards of directors for special districts must meet within special districts. (Gov. Code § 54954(b).)

However, there are boundary exemptions set forth in the Brown Act that permit the legislative body to meet outside of its boundaries to do any of the following:

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

2. Inspect real property located outside the jurisdiction or personal property that would be inconvenient to bring inside the jurisdiction.

3. Participate in meetings or discussions of multi-agency significance so long as the meetings are held at the jurisdiction of one of the agencies and proper notice is provided by all bodies covered by the Act.

4. Meet at the nearest available facility if the legislative body has no meeting facility within the jurisdiction or at the principal office of the legislative body if that office is located outside the jurisdiction.

5. Meet with federal or California officials on a legislative or regulatory issue affecting the local agency when a local meeting would be impractical and over which the state or federal officials have jurisdiction.

6. Meet in or nearby a facility owned by the local agency so long as the topic of the meeting is directly related to the facility itself.

7. Visit the office of the body's legal counsel for a closed session held on pending litigation when to do so would reduce legal fees or costs.

School districts have certain additional exemptions. Joint powers authorities must meet within the jurisdiction of one of its member agencies unless one of the above exemptions apply.

V. PERMISSIBLE CLOSED SESSIONS

A. PURPOSE

The basic purpose of the Brown Act is to be sure that the public business is conducted in public and that the public is permitted to participate. However, the Legislature has recognized those instances when discussion of certain types of matters in open session would not be in the best interest of the public.

1. Narrow Construction. Closed sessions cannot be conducted unless expressly authorized by specific statutory provisions of the Brown Act. Since closed sessions are the exception to the open meeting requirements of the Brown Act, the provisions allowing closed sessions have been narrowly construed. Even if a matter is sensitive, controversial, cumbersome, embarrassing or could be handled in a much more expeditious manner in closed session, a closed session is not allowed unless expressly authorized by the Brown Act.

2. Semi-Closed Meetings. Sessions of legislative bodies are either "closed" or "open." There should not be any so-called "semi-closed" meetings. In other words, a legislative body cannot invite selected members of the public to attend closed sessions while excluding others. In general, closed sessions should only include those members of the legislative body and any additional support staff that may be necessary (e.g., legal counsel, supervisor in a disciplinary matter, consultants, real estate or labor negotiators).

3. Secret Ballots. Secret ballots cannot be conducted in closed session unless the vote is specifically related to a closed session matter. In other words, if the item under consideration is not subject to a specific closed session exception, any vote on the item must be conducted in open session. Also, many votes that are permitted to be taken in closed session must be reported in the open session immediately following.

B. AUTHORIZED EXCEPTIONS

1. Personnel Exception (Gov. Code § 54957(b)). The so-called "personnel" exception allows a legislative body to meet in closed session 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."

The term "employee" is defined as including an officer or an independent contractor who functions as an officer or an employee, but does not include any elected official, member of a legislative body or other independent contractors. It is important to keep in mind that this particular closed session does not allow for discussion or action on proposed compensation except for reducing compensation that results from imposition of discipline.

A closed session under the personnel exception that involves specific complaints or charges brought against an employee requires that notice be given to the employee of his or her rights to have complaints or charges aired in open session. The notice must be provided 24 hours before the meeting.

2. Pending Litigation Exception (Gov. Code § 54956.9). The Brown Act provides that a legislative body may meet in closed session to discuss "pending litigation." "Litigation" is defined to include any adjudicatory proceedings, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer or arbitrator. For purposes of the Act, litigation is considered "pending" when any of the following circumstances exist: (a) litigation to which the agency is a party has been initiated formally; (b) it has been determined based on certain defined existing facts and circumstances that there exists a significant exposure to litigation (i.e., threatened or anticipated litigation against the agency); or (c) a local agency desires to discuss potential litigation to be initiated by the agency.

With respect to "existing litigation" the most obvious situation is when there has been an actual lawsuit filed in court or where another administrative agency names the local agency as a party.

With respect to threatened or anticipated litigation against the local agency, there are six separate categories of facts and circumstances, one of which must exist in order for a closed session to take place. An agency should consult with its counsel to determine whether these facts and circumstances exist, in order to provide a basis for a closed session. The legislative body may also meet under this exception to determine whether a closed session is authorized based on the information provided by legal counsel or staff.

3. Real Estate Negotiations Exception (Gov. Code § 54956.8). This exception allows a legislative body to meet in closed session to grant authority to its negotiator regarding real property negotiations and the power to finalize any agreement so negotiated. This closed session item concerns the purchase, sale, lease or exchange of property by or for the agency, and it must be preceded by an open session in which the body identifies both the real property and the persons with whom the negotiator may negotiate. If after negotiations for the purchase of property there is an impasse, and the legislative body wishes to consider eminent domain proceedings, such discussions should be held under the pending litigation exception of the Brown Act rather than the real property negotiation exception.

4. Labor Negotiation Exception (Gov. Code § 54957.6). A legislative body may meet in closed session with its labor negotiator regarding employment discussions with employee organizations and unrepresented employees regarding compensation. During such closed sessions, the legislative body may approve an agreement concluding labor negotiations with represented employees. However, closed sessions may not include final actions on proposed compensation for unrepresented employees. Prior to

the closed session, the legislative body shall, in open and public session, identify the designated representatives and parties to the negotiation.

5. UPDATE: Public Security Exception (Gov. Code § 54957). Legislative bodies may meet in closed session with the Governor, Attorney General, district attorney, agency counsel, sheriff or chief of police, or their respective deputies, or a security consultant or security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, or a threat to the public's right of access to public services or public facilities.

Government Code section 54957 includes among those who can meet with a legislative body in closed session, agency counsel and security consultants or security operation managers with respect to matters posing a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service and electric service.

6. License Application Exception (Gov. Code § 54956.7). The Brown Act provides special provisions for consideration of license applications by persons with criminal records.

7. Other Authorized Exceptions.

a. Joint powers agencies may meet in closed session to discuss a claim for payment of a tort liability loss, public liability loss, or workers' compensation liability incurred by the joint powers agency or local agency member of such a joint powers agency. (Gov. Code § 54956.95.)

b. Multi-jurisdictional law enforcement agencies may meet in closed session to discuss the case records of any ongoing criminal investigation of the multi-jurisdictional law enforcement agency. A "multi-jurisdictional law enforcement agency" is a joint powers entity formed to investigate criminal activity or felony possession of a firearm; high technology, computer, or identify theft; human trafficking; or vehicle theft. (Gov. Code § 54957.8.)

c. A legislative body may meet in closed session to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty or other extraordinary event. (Gov. Code § 54957.10)

d. County hospitals, hospital districts, school districts and community colleges may conduct additional closed sessions under certain statutory provisions, including Health and Safety Code sections 1461, 1462, 32106, 32155 or Government Code sections 37606, 37606.1 and 37624.3 as they apply to hospitals, or any provisions of the Education Code pertaining to school districts and community college districts. (Gov. Code § 54962.)

C. MINUTE BOOK

An agency may, but is not required to, keep a minute book with respect to closed sessions. (See Gov. Code § 54957.2.) If it chooses, the legislative body may designate a clerk or other officer or employee to attend the closed session to keep the minute book. Such a minute book is not a public record, therefore is not subject to disclosure, and shall be kept confidential.

D. CONFIDENTIALITY OF CLOSED SESSIONS

Government Code section 54963 provides that a person may not disclose confidential closed session information without the consent of the legislative body holding the closed session. Violations can be addressed by injunction or disciplinary action.

VI. RECORDS DISTRIBUTED TO A LEGISLATIVE BODY

Agendas of public meetings and any other writings, when distributed to all or a majority of the 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 subject to disclosure under the California Public Records Act, Government Code section 6250 *et seq*., and shall be made available upon request without delay. However, any records so distributed are not subject to disclosure if they fall within the certain specified exemptions (see Government Code sections 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, and 54957.5(a)).

Any writing that is a public record and relates to an agenda item for an open session of a regular meeting that is distributed less than 72 hours prior to the meeting must be made available for public inspection at a designated public office or location at the same time the writing is distributed to all or a majority of the legislative body. The local agency must list the location where such writings and all of the agency's agendas are available. The local agency may also post the writing on the agency's website in a manner and location that makes it clear the writing relates to an agenda of an upcoming meeting. (Gov. Code § 54957.5(b).) Writings that are public records subject to disclosure and that are distributed during a public meeting shall be made available for public inspection at the public meeting if prepared by the local agency or a member of the legislative body, and should be provided after the meeting if prepared by some other person. Any such writings shall be made available in an appropriate alternative format upon request by a person with a disability. (Gov. Code § 54957.5(c).)

VII. PENALTIES AND REMEDIES FOR VIOLATION OF THE ACT

The Brown Act includes provisions that make violations of the Act a crime and authorize civil actions to invalidate actions previously taken or to stop or prevent violations.

A. CRIMINAL PENALTIES (Gov. Code § 54959)

Each member of a legislative body who attends a meeting of that legislative body where "action" is taken in violation of the Act, 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." "Action taken" is defined by Government Code section 54952.6 and means a collective decision, commitment or promise by a majority of the members of the body to make a positive or negative decision, or an actual vote. Mere deliberation without some action is not a subject to criminal penalty.

B. CIVIL REMEDIES

1. Injunctive Relief (Gov. Code § 54960). The Brown Act provides that the district attorney or any interested person may commence an action by mandamus or injunctive or declaratory relief for the purpose of stopping or preventing violations or threatened violations of the Brown Act.

2. Invalidation of Action (Gov. Code § 54960.1). The district attorney or any interested person may commence an action or mandamus or injunction for obtaining a court order that actions taken in violation of certain provisions of the Brown Act are null and void. The specified provisions concerning which such a suit may be filed are:

(a) General open meeting requirement (§ 54953);

(b) Agenda requirement for regular meetings (§ 54954.2);

(c) Safe harbor notice provisions for closed sessions (§ 54954.5);

(d) Procedures for new taxes and assessments (§ 54954.6);

(e) Requirements for special meetings (§ 54956); and

(f) Requirements for emergency meetings (§ 54956.5).

However, prior to commencing such an action, the legislative body must be provided a demand to cure or correct the action alleged to have been taken in violation of the Brown Act. The written demand must be made within 30 days of the action if it was in open session, or within 90 days of the action in all other situations. The legislative body shall within 30 days correct or cure the challenged action or advise the demanding party in writing of its decision not to do so. If the legislative body takes no action, the demanding party may initiate litigation but must do so within 15 days of receipt of decision to cure or correct or refusal to do so or within 15 days of the end of the 30-day period to cure or correct.

UPDATE: 3. Limitation on Relief For Past Actions of Legislative Bodies (Gov. Code § 54960.2).For actions filed by the district attorney or any interested person related to past actions of a legislative body, the potential filer must first mail or fax a cease and desist letter to the legislative body within nine months of the alleged violation. The legislative body has 30 days to respond. If the legislative body does not timely provide an unconditional commitment to cease, desist and not repeat the challenged action, then an action may be brought, but only within 60 days of expiration of the response period. "Late" unconditional commitments made be made by the legislative body, but in that event the court shall award attorneys' fees and costs to the filer. "Unconditional commitments" must be approved by the legislative body in open session, and not on a consent agenda, and will bar the filing of an action. However, violation of an "unconditional commitment" constitutes an independent violation of the Brown act. There are also provisions for rescission of an unconditional commitment.

4. Attorneys' Fees (Gov. Code § 54960.5). A court may award court costs and reasonable attorneys' fees to plaintiffs in actions brought under the Brown Act where it finds that there has been a violation of the Act. These costs and fees shall be paid by the local agency and shall not be the personal liability of the public officer or employee. The court may also award court costs and reasonable

attorneys' fees to a defendant legislative body or member where the defendant prevails and the court finds the action was clearly frivolous and totally lacking in merit.

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