

Technical Advisory Committee Agenda
February 11, 2009
12:00 noon to 2:00 p.m.
Development Services Center / City Operations Building
1222 First Ave, San Diego, CA 92101
4th Floor Training Room

<u>Group Represented</u>	<u>Primary Member</u>	<u>Alternate</u>
Accessibility	<input type="checkbox"/> Mike Conroy	<input type="checkbox"/> Connie Soucy
Accessibility	<input type="checkbox"/> Cyndi Jones	<input type="checkbox"/> Connie Soucy
AGC	<input type="checkbox"/> Brad Barnum	<input type="checkbox"/> Mike Dunbar
AIA	<input type="checkbox"/> Kirk O'Brien	<input type="checkbox"/> Kevin Pollem
AIA	<input type="checkbox"/> David Pfeifer	<input type="checkbox"/> John Ziebarth
ASLA	<input type="checkbox"/> Steve Halsey	<input type="checkbox"/> Stephen Copley
BIA	<input type="checkbox"/> Kathi Riser	<input type="checkbox"/> Jerry Livingston
BIA	<input type="checkbox"/> Scott Molloy	
BID Council	<input type="checkbox"/> Diana Spyridonidis	
BIOCOM	<input type="checkbox"/> Faith Picking	
CELSOC	<input type="checkbox"/> Rob Gehrke	<input type="checkbox"/> Mike Slawson
Chamber of Commerce	<input type="checkbox"/> Mike Nagy	
EDC	<input type="checkbox"/> Ted Shaw	
In-Fill Developer	<input type="checkbox"/> Michael Galasso	<input type="checkbox"/> James Barone
NAIOP	<input type="checkbox"/> Buddy Bohrer	
Permit Consultants	<input type="checkbox"/> Brian Longmore	<input type="checkbox"/> Barbara Harris
Small Business Advis. Bd.		<input type="checkbox"/> Warren Simon
Sustainable Energy Advis. Bd.	<input type="checkbox"/> Mike Turk	<input type="checkbox"/> Alison Whitelaw
LU&H Liaison (non-voting)	<input type="checkbox"/> Stephen Hill	

- 1) **Announcements**
- 2) **Public Comment on Non-Agenda Items**
- 3) **Discussion/Action**
 - A. General Plan Action Plan-(Action) – Melissa Devine (30 minutes)
<http://www.sandiego.gov/planning/genplan/index.shtml>
 - B. Rules for TAC Quorum-(Action) – (30 minutes)
 - (1) what constitutes a quorum for convening a meeting,
 - (2) absences (excused and unexcused) leading to removal from committee,
 - (3) subcommittee members do not have to be TAC members,
 - (4) one-year term and verification by organizations about their representation, and
 - (5) any other updates (i.e. should represented groups be listed, thus requiring a change to the by-laws if any other groups are added? or how to deal with members that represent a stakeholder/interest group rather than a specific organization)
- 4) **Items for next TAC Meeting / Agenda**
- 5) **Future Agenda Items**
 - Initiative for Accessible Housing
 - Fee Study
 - Managed Competition
 - Parking Study/Where SANDAG Stands
- 6) **Adjourn – next meeting Wednesday, March 11, 2009**

TAC Mission: “To proactively advise the Mayor and the Land Use and Housing Committee on improvements to the regulatory process through the review of policies and regulations that impact development. And to advise on improvements to the development review process through communications, technology and best business practices to reduce processing times and improve customer service. And to advocate for quality development to meet the needs of all citizens of San Diego.”

Simplified Roberts Rules of Order

- **Main ideas:**

- Everyone has the right to speak once if they wish, before anyone may speak a second time.
- Everyone has the right to know what is going on at all times.
- Only urgent matters may interrupt a speaker.
- The [members] discuss only one thing at a time.

- **How to do things:**

1. **You want to bring up a new idea before the group.**

After recognition by the [president], present your motion. A second is required for the motion to go to the floor for debate, or consideration.

2. **You want a motion just introduced by another person to be killed.**

Without recognition from the [president] simply state "I object to consideration." This must be done before any debate. This motion requires no second, is not debatable and requires a 2/3 vote.

3. **You want to change some of the wording in a motion under debate.**

After recognition by the [president], move to amend by

1. adding words,
2. striking words or
3. striking and inserting words.

4. **You like the idea of a motion under debate, but you need to reword it beyond simple word changes.**

Move to substitute your motion for the original motion. If it is seconded, debate will continue on both motions and eventually the body will vote on which motion they prefer.

5. **You want more study and/or investigation given to the idea under debate.**

Move to refer to a committee. Try to be specific as to the charge to the committee.

6. **You want more time personally to study the proposal under debate.**

Move to postpone to a definite time or date.

7. **You are tired of the current debate.**

Move to limit debate to a set period of time or to a set number of speakers. Requires a 2/3 vote.

8. **You have heard enough debate.**

Move to close the debate. Requires a 2/3 vote.

Or move to previous question. This cuts off debate and brings the assembly to a vote on the pending question only. Requires a 2/3 vote.

9. **You want to postpone a motion until some later time.**

Move to table the motion. The motion may be taken from the table after 1 item of business has been conducted. If the motion is not taken from the table by the end of the next meeting, it is dead. To kill a motion at the time it is tabled requires a 2/3 vote. A majority is required to table a motion without killing it.

10. **You want to take a short break.**

Move to recess for a set period of time.

11. **You want to end the meeting.**

Move to adjourn.

12. **You are unsure that the [president] has announced the results of a vote correctly.**

Without being recognized, call for a "division of the house." At this point a standing vote will be taken.

13. **You are confused about a procedure being used and want clarification.**

Without recognition, call for "Point of Information" or "Point of Parliamentary Inquiry." The [president] will ask you to state your question and will attempt to clarify the situation.

14. You have changed your mind about something that was voted on earlier in the meeting for which you were on the winning side.

Move to reconsider. If the majority agrees, the motion comes back on the floor as though the vote had not occurred.

15. You want to change an action voted on at an earlier meeting.

Move to rescind. If previous written notice is given, a simple majority is required. If no notice is given, as 2/3 vote is required.

- **You may INTERRUPT a speaker for these reasons only:**
 - to get information about business - **point of information**
 - to get information about rules - **parliamentary inquiry**
 - if you can't hear, safety reasons, comfort, etc. - **question of privilege**
 - if you see a breach of the rules - **point of order**
 - if you disagree with the [president]'s ruling - **appeal**
- **You may influence WHAT the [members] discuss:**
 - if you would like to discuss something - **motion**
 - if you would like to change a motion under discussion - **amend**
- **You may influence HOW and WHEN the [members] discuss a motion:**
 - if you want to limit debate on something - **limit debate**
 - if you want a committee to evaluate the topic and report back - **commit**
 - if you want to discuss the topic at another time - **postpone or lay it on the table**
 - if you think people are ready to vote - **previous question**

Parliamentary Procedure Motions Chart

Adjourn	S			M	
Recess	S		A	M	
Table	S			M	
Close Debate	S			2/3	R
Limit Debate	S		A	2/3	R
Postpone To Later Time	S	D	A	M	R
Refer To Committee	S	D	A	M	R
Amend Amendment	S	D		M	R
Postpone Indefinitely	S	D	A	M	R
Main Motion	S	D	A	M	R

-
- S = Must Be Seconded D = Debatable A = Amendable M = Requires A Simple Majority Vote
2/3 = Requires A 2/3 Vote R = May Be Reconsidered Or Rescinded

**Committee on Land Use and Housing's -
Technical Advisory Committee (TAC) Procedures -
Adopted July 12, 2006 -**

I. Meetings

A. Conduct of Meetings

Except as otherwise specifically noted herein, Robert's Rules of Order shall apply to the conduct of Technical Advisory Committee meetings.

B. Date and Time

Meetings of the Technical Advisory Committee generally occur on the second Wednesday of each month, except as adjusted for holidays or other reasons. It is expected that meetings will generally begin at 12:00 PM and end by 2 PM.

C. Committee Purpose and Management of Agendas

The Technical Advisory Committee's purpose is to advise the Land Use and Housing Committee on improvements to the development review process, using communication, technology and best business practices to reduce processing times and better serve the customers and citizens of San Diego. This role includes numerous diverse responsibilities. Committee members are appointed to serve in a completely voluntary capacity. In order to ensure continued quality of life for individual Committee members and to strive for reasonable agendas, the Committee staff shall manage each month's agenda so that the number of items scheduled can be reasonably expected to be heard by the Committee within the time allotted for meetings. On occasion, the necessary business of the Committee may lend itself to additional or prolonged meetings, but these instances shall be kept to a minimum and shall follow the procedures below.

D. Special or Extended Meetings

The Committee may set additional special meetings, cancel meetings or extend the length of current or future regular meetings, as needed, based on the affirmative vote of a majority of the Committee members present at the meeting where the motion is made. The length of an upcoming Committee meeting may also be extended by staff, with the agreement of the Committee Chair, prior to the preparation of the meeting's agenda and with appropriate notification to Committee members.

E. Committee Member Attendance

Technical Advisory Committee members are expected to attend all regular and special Committee meetings, and meetings of subcommittees to which a Committee member is appointed. Committee members are encouraged to notify staff of expected absences prior to meetings if possible. Any Committee member who finds his or herself unable to attend meetings on a regular basis should reconsider his or her ability to serve on the Committee.

F. Recusals and Abstentions

Any Technical Advisory Committee member may abstain from voting on an action of the Committee after stating the reason for the abstention in discussion before the vote occurs. Recusals for reasons of conflicts of interest should be stated during the appropriate time on the agenda, but in no case after a motion on a Committee action has been made and seconded.

G. Quorum

All actions of the Committee shall be approved by vote of a simple majority of the members present.

H. Presentation Time Limits

Presentations by members of the public to the Technical Advisory Committee shall be limited to three minutes for individual speakers, and eight minutes per side for organized presentations. These times may be adjusted by the Committee Chair based on the length of the agenda, complexity of the item and/or the number of submitted speaker slips.

II. Business of the Committee

A. Reconsiderations

Reconsideration of Technical Advisory Committee votes may take place in accordance with Robert's Rules of Order and these procedures.

B. Technical Advisory Committee Recommendations to Decision-Makers

When the Technical Advisory Committee is taking action on a recommendation to a decision-maker, the Committee shall make a recommendation on only those aspects of the matter that relate to the Committee's purpose.

III. Subcommittees

A. Establishment

TAC may establish subcommittees to further the efficient conduct of business as necessary.

B. Standing Subcommittees

Standing subcommittees that meet one or more times per month may include Process, Access, Customer Service, and Technology. Standing subcommittees generally provide input to staff and make recommendations to the Committee.

C. Ad Hoc Subcommittees

Ad hoc subcommittees may also be established on an as-needed basis. Ad hoc subcommittees may be stand alone subcommittees of the Committee, combined subcommittees including representation from other agencies, or subcommittees of other agencies with Committee representation by one or more Committee members. Ad hoc subcommittees typically provide the Committee with recommendations related to the purpose for which the subcommittee was established

E. Membership & Appointments

Membership on the standing subcommittees shall strive to match expertise and interests to the extent possible, but shall also strive to allow maximum participation by Committee members. The minimum number of Committee members appointed to any standing subcommittee shall be three, and the maximum shall be six. Appointments to the standing subcommittees, including chair appointments, shall be made once a year, or as vacancies occur, and ratified by a majority vote of the Committee at the next available meeting.

IV. Administrative Matters

A. Annual Report

An annual report shall be prepared on behalf of the Committee by staff outlining TAC accomplishments and TAC work program elements.

B. Chair Represents Committee

The Chair of the Committee may represent the full Committee at meetings where the Chair identifies his or herself as speaking on behalf of the Committee.

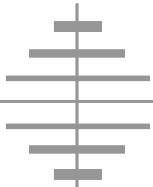
V. Administration of Procedures

A. Amendments

Amendments to these procedures shall be by majority vote of the Committee.

B. Review Process

The Process Subcommittee shall review proposed amendments to these procedures and make a recommendation prior to consideration by the full Committee.



LIEBERT CASSIDY WHITMORE

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Public Meeting Law and Public Records Act: Review and Update

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ALL ABOUT THE AUTHORS

With offices in Los Angeles, Fresno and San Francisco, the law firm of Liebert Cassidy Whitmore represents public agency management in all aspects of labor and employment law, labor relations, and education law. The Firm's representation of cities, counties, special districts, transit authorities, school districts, and colleges throughout California, encompasses all phases of counseling and representational services in negotiations, arbitrations, fact findings, and administrative proceedings before local, state and federal boards and commissions, including the Public Employment Relations Board, Fair Employment and Housing Commission, Equal Employment Opportunity Commission, Department of Labor and the Office for Civil Rights. The Firm regularly handles a wide variety of labor and employment litigation, from the inception of complaints through trial and appeal, in state and federal courts.

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This workbook contains generalized legal information as it existed at the time the workbook was prepared. Changes in the law occur on an on going basis. For these reasons, the legal information cited in this workbook should not be acted upon in any particular situation without professional advice.

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Public Meeting Law (The Brown Act)

SECTION 1 INTRODUCTION

“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.” — Ralph M. Brown Act, 1953¹

In 1953, as a result of elected officials increasingly omitting the public from observing their government bodies at work, Modesto Assembly member Ralph M. Brown carried a bill which required public agencies to conduct their meetings in public. The bill was signed into law by Governor Earl Warren and was called the “Ralph M. Brown Act.”² The Brown Act stands as one of the most pivotal documents in California history and continues to evolve and change. The original 686 - word, one page Brown Act has grown to dozens of pages as the State closed loopholes and added definitions and exceptions.

The purposes of this workbook are to provide an easy-to-understand desktop reference explaining the Brown Act and to provide Brown Act forms, notices and checklists which will assist in implementing the provisions of the Act.

SECTION 2 THE BROWN ACT

The Brown Act is found in California Government Code §§ 54950, *et seq.*

The general rule of the Act requires that actions of the public commissions, boards and councils and the other public agencies in California “be taken openly and that their deliberations be conducted openly.”³ The Act also contains exceptions to the open meeting requirements, however the exceptions are construed narrowly and there is a presumption that matters must be conducted in public.⁴

The Act applies to all “public commissions, boards and councils and the other public agencies” in the State⁵ unless expressly excluded. This includes school and community college districts.

SECTION 3 WHO IS SUBJECT TO THE BROWN ACT?

Section 54953 of the Brown Act provides that all meetings of “the legislative body of a local agency shall be open and public.” What constitutes a “legislative body” or “local agency” is discussed below.

A. LOCAL AGENCIES

1. PUBLIC AGENCIES COVERED BY THE BROWN ACT

Section 54951 provides that the “local agencies” covered by the Act include:

- General Law or chartered county;
- General Law or chartered city;
- City and County;
- Town;
- School District;
- Municipal Corporation;
- District;
- Political subdivision; or
- Any board, commission or agency thereof, or other local public agency.

The definition of public agencies has also been construed to include the following:⁶

- community college districts;
- joint powers agencies;
- housing authority;⁷
- County board of education;⁸
- County or City planning commissions;⁹ and
- Air pollution control district.¹⁰

In determining whether an agency is subject to the Brown Act, it must be determined whether an agency is local in nature. If an agency is not local in nature, but is part of a multi-member state body, the Brown Act may not apply.¹¹ Whether or not an agency is local versus state in nature may depend upon the following factors:

- the geographical coverage of the agency;
- the duties of the agency;
- provisions concerning membership and appointment; or
- existence of an oversight committee.¹²

2. PUBLIC AGENCIES NOT COVERED BY THE BROWN ACT

Courts have held that the Act does not apply to California Associations of Port Authorities organized and regulated by the Federal Maritime Commission,¹³ nor to the Fair Employment Practices Commission (now known as the Department of Fair Employment and Housing).¹⁴

The most notable example of an agency not covered by the Act is a board or commission which is an adjunct to the judiciary; a meeting of the judges of the Superior Court, or a county board of parole commissioners. The Act also does not apply to county central committees of political parties.¹⁵

B. LEGISLATIVE BODIES

1. WHAT IS A LEGISLATIVE BODY?

Section 54952 defines “legislative body” as any of the following:

- The governing body of a local agency or any other local body created by state or federal statute;
 - This is the most basic type of body subject to the Act and includes the board of supervisors of a county, the city council of a city or the governing board of a district.
 - The board of directors of a joint powers authority is also covered.
- 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, unless the standing committee of a legislative body has continuing subject matter jurisdiction (e.g. budget, finance, legislation), or a meeting schedule fixed by charter, ordinance, resolution or formal action of the legislative body.
 - The California Attorney General has ruled that meetings of a standing committee composed of less than a quorum of a legislative body are subject to the requirements of the Act, if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body.¹⁶
 - The term “formal action of a legislative body” does not require a formal resolution or formal vote by the body. Rather, authorization by a legislative body to create an advisory committee could constitute “formal action.”¹⁷

- The California Attorney General has also ruled that members of the legislative body of a local public agency who attend meetings of standing committees of the legislative body as observers may not ask questions or make statements during that meeting, nor may they sit on special chairs at the dais with the committee members while attending as observers.¹⁸
- A board, commission, committee, or other multimember body that governs a private corporation or entity that either:
- Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity;¹⁹ or
 - Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body by the legislative body of the local agency.
 - Generally, entities subject to this subdivision are nonprofit corporations established to construct, operate, or maintain a public works project or public facility.²⁰
 - The Act also applies to meetings of entities that receive funds from a local agency where the legislative body for the local agency appoints one of its members to the governing board of the entity as a voting member of the board.²¹
 - A community college district auxiliary organization governing board is specifically subject to the Act.

The term “legislative body” has also been interpreted to include a private corporation if created by an elected legislative body of a public agency to exercise authority delegated by the elected body to the private entity.²²

2. WHAT IS NOT A LEGISLATIVE BODY?

As stated above, advisory committees composed solely of less than a quorum of the members of the legislative body that created the advisory body are not legislative bodies. Meetings of such committees need not be open to the public.²³ However, if a legislative body designates less than a quorum of its members to meet with representatives of another legislative body to perform a task, an advisory committee consisting of the representatives from both bodies would be created and the provisions of the Act would apply.²⁴

In a recent case, the court found that private meetings between two members of a five-member City Council and various individuals, constituents and city staff were not subject to the Brown Act. The purpose of the meetings was to prepare the City’s response to a draft land use plan prepared by the California Coastal Commission and released for public comment. The court found that the two members did not have jurisdiction over the City’s response to the

commission's proposed plan nor did they constitute a quorum of the City Council. They thus were not a "legislative body" and were an advisory body not subject to the Brown Act.²⁵

3. WHO IS A MEMBER OF A LEGISLATIVE BODY?

Nowhere in the Act is the term "member of a legislative body" defined. Apparently the legislature expected that the common understanding of the term "member" would be used. There have been no cases involving a dispute over the term "member." Thus, any individual who is elected or appointed to sit on a legislative body and vote on and make decisions with other such individuals likely will be considered a "member."

Individuals who have not yet assumed the duties of elected office are subject to the Act. Section 54952.1 provides that any person elected to serve as a member of a legislative body and who has not yet assumed the duties of office must conform his or her conduct to the requirements of the Act and shall be treated for purposes of enforcement of the Act as if he or she has already assumed office. Section 54952.7 provides that a legislative body may require that a copy of the Act be given to each member of the body and permits the legislative body to require that a copy of the Act be given to any person elected to serve as a member of the legislative body who has not yet assumed office.

SECTION 4 WHAT IS A MEETING UNDER THE BROWN ACT?

A. CIRCUMSTANCES WHERE BROWN ACT APPLIES

The Act requires that all "meetings" of the legislative body of a local agency shall be open and public.²⁶ Section 54952.2 defines "meeting" as any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item within the subject matter jurisdiction of the legislative body or its local agency. This definition encompasses the following:

- All deliberations, discussions, or receipt of information that takes place among the members of a legislative body before a final decision is made, or a final vote is taken.²⁷
- Any discussions that take place during meetings of a city council with the city manager, assistant city manager, city attorney, and planning director.²⁸
- Internal gatherings such as lunches or social gatherings if issues under the subject matter jurisdiction of the body are discussed or decided by the members of the body.²⁹
- Any use of direct communication, personal intermediaries, or technological devices employed by a majority of the members of a legislative body to develop a collective concurrence as to the action to be taken on an item.

Members of a legislative body are prohibited from meeting over the phone or through some other technological device or through intermediaries for the purpose of developing a collective concurrence, except as authorized under Section 54953.

- Communications by individual members (or their intermediaries and/or representatives) of less-than-a-quorum group which ultimately involves a majority of the body's members. Such meetings are referred to as "serial meetings:"
 - This can involve several separate conversations between different members of a legislative body of a local agency, or several separate conversations between members of a legislative body of a local agency and a single person (i.e. attorney, agency staff member) for the purpose of obtaining a collective commitment or promise by a majority of that body concerning public business.
 - This would also include retreats. The California Attorney General believes a retreat attended by members of a legislative body falls under the Act if discussion includes matters within the legislative body's subject matter jurisdiction. This would include issues of procedures, morale or other concerns involving communications among board members or between board members and staff.³⁰ Thus, only a retreat for purely social reasons would fall outside the scope of the Act. Please be aware that if your legislative body does not open its retreat to the public pursuant to the Act, a Brown Act challenge is possible.
 - This includes emails.

The Brown Act refers in various places to "action taken" by a legislative body. Section 54952.6 provides that "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 to make a positive or negative decision, or an actual vote by a majority of the members when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Section 54953(c), prohibits a legislative body from taking action at a meeting by secret ballot, whether preliminary or final.

B. CIRCUMSTANCES WHERE BROWN ACT DOES NOT APPLY

- A telephone conversation, but only if it does not serve to "poll" members of the legislative body.
- Individual contacts or conversations between a board member and any other person; the term "any other person" means any person other than a board member or agency employee. Accordingly, individual conversations among board members or between board members and their staff may be subject to the Act if such conversations constitute "serial meetings."

- Attendance of a majority of members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body; provided that a majority of the members do not discuss among themselves, other than as part of a scheduled program, specific business within the subject matter jurisdiction of the local agency. A meeting is considered to be open to the public even if the conference organizers charge a fee for attendance.
- 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 a majority of the members do not discuss among themselves, other than as part of a scheduled program, specific business within the legislative body's jurisdiction.
- 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.
- Attendance of a majority of the members at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves specific business within the board's or council's jurisdiction.
- However, if two bodies conduct a joint meeting, each body should notice the meeting as a joint meeting of the two bodies.
- Attendance of a majority of the members of the board or council at an open and noticed meeting of a standing committee of that body, provided that the members of the board or council who are not members of the standing committee attend only as observers, do not address the committee by testifying, ask questions or provide information, or sit at the dais.³¹
- Section 54953.1 provides that the Brown Act shall not be construed to prohibit members of a legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

SECTION 5 **TIME AND PLACE MEETINGS CAN BE CONDUCTED**

A. SECTION 54954

Section 54954 provides great detail as to when and where a meeting may take place.

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

Second, regular and special meetings must be held within the agency's territory except to do any of the following:

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

Third, school board meetings shall be held within the district, except under the following circumstances:

- to interview members of the public residing in another district regarding the trustees' potential employment of the superintendent of that district;
- to interview a potential employee from another district; or
- to attend a conference on nonadversarial collective bargaining techniques.

Fourth, meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in Section 54954(b).

Fifth, if, by reason of fire, flood, earthquake, or other emergency, it is 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 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.

B. OTHER RESTRICTIONS ON WHERE A MEETING MAY TAKE PLACE - FACILITY THAT DISCRIMINATES

Section 54961 provides that no legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person(s) on the basis of race, religious creed, color, national origin, ancestry, or sex, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.

SECTION 6 AGENDA AND NOTICE REQUIREMENTS FOR REGULAR, SPECIAL AND EMERGENCY MEETINGS

The Act provides for three different types of meetings: (1) regular meetings, (2) special meetings and (3) emergency meetings. The notice and agenda requirements for each type of meeting are set forth below.

A. REGULAR MEETINGS

Section 54954(a) provides that the legislative body of a local agency 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. In the event a meeting is held at a time or place other than that specified by the applicable ordinance, resolution or bylaw, the meeting is either a special or emergency meeting.

1. AGENDA REQUIREMENTS OF REGULAR MEETINGS

Section 54954.2 provides that at least 72 hours before a regular meeting, the legislative body 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 discussion of an item generally need not exceed 20 words.

The agenda must also 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.

- The California Attorney General's Office has stated that the agenda must be posted in a location that is accessible 24 hours a day for the 72 hours prior to the meeting. Accordingly, notices cannot be placed in buildings which are locked for some portion of the 72 hours immediately prior to the hearing.³²

SAMPLE NOTICE OF MEETING

Notice of Meeting of the City of Sunshine City Council

Date: November 14, 2006
Time: 6:30 p.m.
Location: City Council Chambers

Please take notice that the City of Sunshine City Council will hold its next regular meeting on November 14, 2006, at 6:30 p.m., in the Council Chambers located at 777 Happy Face Lane, City of Sunshine.

A copy of the agenda for the meeting will be posted at least 72 hours before such meeting. A copy of the written materials which will be submitted to the City Council may be reviewed by any interested persons at the public counter at the City Clerk's Office during regular business hours following the posting of the agenda.

This Notice of the Date, Time and Location of the next regular meeting of the Norwood City Council is given this 14th day of November, 2006.

Date this Notice Posted: November 7, 2006

Sam Smiley
City Clerk

SAMPLE AGENDA

Agenda / BOARD OF TRUSTEES—REGULAR MEETING

Date: November 14, 2006
Time: 6:30 p.m.
Location: Board Room- Administration Building –Burns Campus

I. Call to Order - Flag Salute
Board Member - Simpson

II. Roll Call:
Members –Simpson, Smithers, Burns, Millhouse, and Krusty

III. Approval of Minutes of Meeting of November 1, 2006

IV. Election of Officers

V. Agenda Items - Open Session

1. Superintendent/President
 - a. Participation at Annual Conference in Skinner, Ohio
2. Administrative Services
 - a. Agreement with Donut World
 - b. Consideration of increase in sports admission fees

VI. Agenda Items -Closed Session

1. Personnel
 - a. Appointment - Classified Secretary II, Classified, Water Systems Engineer II
 - b. Discipline
2. Labor Negotiations:
 - a. Meeting with District negotiator re: CSEA negotiations
3. Conference with Legal Counsel -Existing Litigation
 - a. Flanders v. Springfield College, Springfield Sup. Ct. Case No. 111111

VII. Public Comment

VIII. Adjourn to November 28, 2006 at 6:30 p.m.

2. DISCUSSION OF ITEMS NOT ON AGENDA

Section 54954(a) further provides that no action or discussion shall be undertaken on any item not appearing on the posted agenda, except under the following circumstances:

- 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.
- 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.
- A member of a legislative body, or the body itself, subject to the 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.

3. OTHER SITUATIONS IN WHICH A LEGISLATIVE BODY MAY DISCUSS OR TAKE ACTION ON MATTERS NOT ON THE AGENDA

Following are additional circumstances under which the body may discuss a matter not previously on the agenda. However, prior to discussing the matter, the item must be publicly identified. Accordingly, the body may discuss an item that was not previously placed upon an agenda at a regular meeting if:

- by majority vote, the body determines that the matter in question constitutes an emergency situation as defined in Section 54956.5;
- by a 2/3 vote of the body, or if less than 2/3 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 Section 54954.2(a) (i.e. within 72 hours before the regular meeting.)

***Note:** This exception provides that the need for immediate action must have been brought to the attention of the “local agency” rather than the legislative body. Thus, the exception would likely only apply if the agency, and not merely the legislative body, first knew about the situation after the agenda is posted.*

- the item was posted pursuant to Section 54954.2(a) (requiring 72 hours notice) 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.³³

4. REQUIREMENT THAT AGENDA PROVIDE FOR PUBLIC COMMENT

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 body’s consideration of the item that is within the body’s jurisdiction.³⁴

- However, the agenda does not have to provide an opportunity for members of the public to address the body on any item that has already been considered by a committee composed exclusively of members of the body at a public meeting which all interested members of the public were afforded an opportunity to address the committee on the item unless the item has substantially changed since the committee heard the item as determined by the body.³⁵

The Attorney General’s Office has suggested that legislative bodies should afford the public an opportunity to comment on closed-session items prior to the body’s adjournment into closed session.

The legislative body of a local agency may adopt regulations which limit the total time allocated for public testimony on particular issues and for each individual speaker.³⁶ However, the body cannot prohibit criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body.³⁷ Though a body may prohibit a speaker from making comments that are outside the body's jurisdiction, the courts have broadly interpreted the rights of the public to engage in public speech.³⁸

Where a member of the public raises an issue that does not appear on the agenda, no action may be taken on the item unless authorized by Section 54954.2. Further, the Brown Act does not compel a government body to allow members of the public to comment on what items should be placed on the agenda.³⁹

Finally, one federal district court held that a school district's policy which prohibited criticism of district employees during the open sessions of the district's school board meetings violated both Section 54954.3 of the Brown Act as well as the First Amendment free speech rights of the members of the public.⁴⁰ But the Ninth Court of Appeal upheld a City Council's rules of decorum for its meetings which prohibited personal, impertinent, slanderous or profane remarks to any member of the Council. Importantly, the City construed its own ordinance very narrowly to avoid prohibiting content of speech but rather to control and prohibit conduct which would disrupt the agency's ability to conduct its business.⁴¹

SAMPLE REGULATIONS RE: ADDRESSING THE LEGISLATIVE BODY

Any person who wishes to address the Council please comply with the following:

- 1) Complete a "Request to Address the Council" form and present it to the Clerk prior to the time you wish to address the Council; such form may request, but may not require, that the speaker include his or her address on the form;
- 2) Wait for your name to be called by the Clerk to speak;
- 3) Stand up in the audience;
- 4) Secure the permission of the Presiding Officer to approach the podium;
- 5) Speak into the microphone;
- 6) State your name and address for the record;
- 7) Limit comments to five (5) minutes on agenda items unless further time is granted by the Council. Comments on agenda items will be limited to twenty (20) minutes per subject unless further time is granted by the Council;
- 8) With respect to non-agenda items, only when the Presiding Officer calls you to speak

may you do so. Comments on non-agenda items shall be limited to three (3) minutes per speaker and fifteen (15) minutes per subject unless further time is granted by the Council;

- 9) Preference to address the Council shall be given to persons who have notified the Clerk in advance of their desire to address the Council.

5. PUBLIC'S RIGHT TO REQUEST MAILED NOTICES OF MEETINGS

Pursuant to Section 54954.1, a legislative body must give mailed notice of any regular (or special) meeting at least one week prior to the date set for the meeting to any person who has filed a written request for such notice with the body. As for special meetings (see below) the body may give notice as it deems practical where the special meeting is called less than seven days prior to the date set for the meeting. The body may establish a reasonable annual fee for sending the notice based on the estimated cost of providing the service.

Any request for notice filed pursuant to Section 54954.1 is valid for one year from the date it is filed unless a renewal request is filed. Renewal requests must be filed within 90 days after January 1 of each year.

Failure of the body to provide mailed notice pursuant to Section 54954.1 does not constitute grounds for a court to invalidate the actions of the body for which the notice was given.

B. SPECIAL MEETINGS

Section 54956 provides that the presiding officer of the legislative body, or a majority of the members of the body, may call a special meeting at any time by delivering written notice to each member of the body and to each local newspaper of general circulation and radio or television station requesting notice in writing.

Notice of a special meeting must be delivered personally, or by any other means, at least 24 hours before the time of the meeting specified in the notice. The call and notice must specify the time and place of the special meeting and the business to be transacted or discussed. No business other than that specified in the call and notice may be considered at a special meeting. The call and notice must be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public. Notice of a special meeting is required even if the meeting is conducted in closed session and even if no action is taken. The written notice may be dispensed with as to any member who files a waiver of the notice with the clerk or secretary. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

Finally, every notice of a special meeting must provide an opportunity for members of the public to directly address the body concerning any item that has been described in the notice for the meeting before or during consideration of that item.⁴²

SAMPLE NOTICE OF SPECIAL MEETING

Notice of Special Meeting of the City of Springfield City Council

Date: January 6, 2007
Time: 6:30 p.m.
Location: City Council Chambers

Please take notice that the Mayor of the City of Springfield hereby calls a special meeting of the City Council for January 6, 2007 at 6:30 p.m., in the Council Chambers located at 1711 Homer Lane, City of Springfield.

The purpose of the meeting is to discuss and vote on whether to approve a contract between the City and Gigantic Studios, Inc., to film "Terminator 16" within the City limits.

Date and Time This Notice Posted:

January 5, 2007 12:00 p.m.
Arnold Shwartz, Mayor

C. EMERGENCY MEETINGS

Pursuant to Section 54956.5, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement which applies to special meetings. Emergency meetings may only be called in the case of an emergency situation involving "matters upon which prompt action is necessary due to the disruption of public facilities." The Act defines "emergency situation" as follows:

- Work stoppages or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body;
- Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

Though an emergency meeting may be held without complying with the notice and posting requirements applicable to special meetings, there are still notice requirements which must be followed. Specifically, each local newspaper of general circulation and radio or television station which has requested notice of special meetings (pursuant to Section 54956) must be notified by the presiding officer of the legislative body, or designee, one hour prior to the emergency meeting by telephone. All telephone numbers provided in the most recent notice by a newspaper or station shall be exhausted. In the event telephone service is not working, the notice requirement shall be waived and the body shall notify those newspapers, or stations that an emergency meeting was held, the purpose of the meeting and any action taken at the meeting as soon after the meeting as possible. In addition, the minutes of the meeting, a list of persons who the body notified or attempted to notify, a copy of the rollcall vote and any actions taken at the

meeting must be posted for at least 10 days in a public place as soon after the meeting as possible.

Legislative bodies cannot hold closed sessions during an emergency meeting.

D. ADDITIONAL NOTICE AND AGENDA REQUIREMENTS

1. SPECIAL NOTICE REQUIREMENTS FOR ADOPTING A NEW TAX

Section 54954.6 requires that the legislative body of a local agency, before adopting any new or increased general tax or any new or increased assessment, must conduct at least one public meeting, with 45 days notice, regarding the proposed new or increased general tax or new or increased public assessment in addition to the noticed public meeting at which the legislative body proposed to enact or increase the general tax or assessment. The notice must be mailed at least 45 days prior to the hearing date and must include additional information relating to the assessment and protests of the assessment. Section 54954.6 also permits a local agency to recover the costs of the hearing and notice from the proceeds of the tax or assessment.

2. SPECIAL RULES REGARDING AGENDAS FOR SCHOOL AND COMMUNITY COLLEGE DISTRICTS

Education Code §§ 35145.5 and 72411.5 allow members of the public to place matters directly related to district business on the agenda of school and community college district governing board meetings, and provides that members of the public shall be able to address the board regarding items on the agenda as such items are taken up. Governing boards must adopt reasonable regulations to ensure compliance with this provision. Such regulations may specify reasonable procedures to ensure the proper functioning of governing board meetings.

This section does not preclude the taking of testimony at regular meetings on matters not on the agenda which any member of the public may wish to bring before the board, provided that no action is taken by the board on those matters at the same meeting at which the testimony is taken. Nothing in this section shall be deemed to limit further discussion on the same subject matter at a subsequent meeting.

This section permits action to be taken on non-agenda items under the three exceptions discussed above under Section 54954.2.

SECTION 7 ADJOURNMENT OF MEETINGS AND CONTINUANCE OF HEARINGS

A. ADJOURNMENT OF MEETINGS

Section 54955 provides that a legislative body may adjourn any meeting or adjourned meeting to a time and place specified in the order of adjournment. If all members are absent from a regular or regular adjourned meeting, the clerk or secretary may declare the meeting adjourned to a stated time and place and give notice to each of the members. A copy of the notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours of the adjournment. 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.

B. CONTINUANCE OF HEARINGS

Section 54955.1 provides that any hearing being held, or noticed or ordered to be held at any meeting, may, by order or notice of continuance, be continued or re-continued to any subsequent meeting of the body in the same manner and to the same extent as provided by Section 54955 for the adjournment of meetings. However, 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 must be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

SAMPLE NOTICE OF ADJOURNMENT

Notice of Adjournment

The Gatsby City Council Meeting of November 14, 2006 adjourned at 11:35 p.m., to Friday, November 18, 2006 at 6:00 p.m., in the Conference Room of the Council Chambers to discuss the business of the Council and closed session items as posted in the agenda for the meeting of November 14, 2006.

Nick Carraway, City Clerk

SAMPLE NOTICE OF CONTINUANCE OF HEARING

Notice of Continuance of Hearing

The Gatsby City Council hearing regarding the appeal of employee, Daisy Buchanan, adjourned at 11:35 p.m. on November 14, 2006, and is continued to Friday, November 28, 2006 at 6:00 p.m., in the Conference Room of the Council Chambers.

Nick Carraway, City Clerk

C. CONDITIONS IMPOSED ON MEMBERS OF THE PUBLIC ATTENDING MEETINGS

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

Section 54953.3 provides that no member of the public shall be required to register his/her name, provide other information, or complete a questionnaire as a condition of attendance at a meeting. If an attendance list, register, questionnaire or other similar document is posted at the meeting or is circulated, it shall state clearly that 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.

D. PUBLIC PARTICIPATION BY VIDEO TELECONFERENCING

Section 54953(b) provides that the use of video conferencing (audio and visual participation by the legislative body and the public attending a meeting or hearing at a video teleconference center) by a legislative body is limited to the receipt of public comment or testimony by a legislative body. In addition, if video teleconferencing is used, the body must post agendas at all video teleconference locations and must adopt reasonable regulations to adequately protect the statutory or constitutional rights of the parties or public appearing before the body.

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

E. PUBLIC RIGHT TO RECORD MEETING

Section 54953.5 permits any person attending an open and public meeting of a legislative body to record the proceedings on an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body that such recording cannot continue without noise, illumination, or obstruction of the view that constitutes, or would constitute, a persistent disruption of the proceedings.

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the Public Records Act (Cal. Government Code § 6250, *et seq.*), but may be erased or destroyed 30 days after the taping or recording. Any inspection shall be provided without charge on a tape player provided by the agency.

F. PUBLIC RIGHT TO BROADCAST A MEETING

Section 54953.6 provides that no legislative body 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.

G. GREATER ACCESS TO MEETINGS THAN REQUIRED BY THE BROWN ACT

Section 54953.7 permits a legislative body to impose requirements which allow greater access to their meetings than prescribed by the minimal standards of the Act.

H. DISORDERLY CONDUCT OF GENERAL PUBLIC DURING MEETING

Section 54957.9 provides that 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 the session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to remain at the meeting. The legislative body may establish a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

I. PUBLIC RIGHT TO INSPECT DOCUMENTS DISTRIBUTED AT PUBLIC MEETINGS

Section 54957.5 provides that agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under the Public Records Act.

Writings that are public records and which are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the agency or a member of the body, or after the meeting if prepared by some other person. This section shall not be construed to limit or delay the public's right to inspect any record required to be disclosed under the requirements of the California Public Records Act.

A legislative body of a local agency may charge a fee or deposit for a copy of a public record.

**SECTION 8 EXCEPTIONS TO THE OPEN MEETING REQUIREMENTS OF
THE BROWN ACT**

A. GENERAL PROHIBITION AGAINST CLOSED SESSION MEETINGS

Section 54962 provides that except as expressly authorized by the exceptions to the Act, or by certain sections related to hospital districts, no closed session may be held by any legislative body of any local agency. It is not enough that a subject is sensitive, embarrassing, or controversial.⁴³ Therefore, without specific authority for a closed session, a matter must be addressed in public. Closed sessions may be authorized in the following situations discussed in greater detail below:

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

B. CLOSED SESSION TO DISCUSS PENDING LITIGATION

Section 54956.9 provides that a legislative body, based on advice of its legal counsel, may hold 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.

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

All expressions of the lawyer-client privilege other than those provided in this section are abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings.

Litigation is considered pending when any of the following four circumstances exist:

- Litigation to which the local agency is a party has been initiated formally;

- A point has been reached where, in the legislative body’s opinion on the advice of its legal counsel, based on “existing facts and circumstances,” there is a significant exposure to litigation;
- Based on “existing facts and circumstances,” the legislative body is meeting only to decide whether a closed session is authorized; or
- Based on “existing facts and circumstances,” the legislative body has decided to initiate or is deciding whether to initiate litigation.

For purposes of this section, “existing facts and circumstances” shall consist only of one of the following:

- Facts and circumstances that might result in litigation against the agency but which the agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed;
- Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, 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;
- A statement made by a person in an open and public meeting threatening litigation made on a specific matter within the responsibility of the legislative body; or
- A statement threatening litigation made by a person outside an open and public meeting made on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection. 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.

This section does not require disclosure of written communication that are privileged and not subject to disclosure pursuant to the California Public Records Acts.

For purposes of this section, a local agency shall be considered to be a “party” or to have a “significant exposure to litigation” if an officer or employee is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

Prior to holding a closed session for the purposes of pending litigation, the legislative body of the local agency shall state on the agenda or publicly announce the subdivision of Section 54956.9 that authorizes the closed session. If the session is closed to discuss litigation that has been initiated formally pursuant to Section 54956.9 (a), the legislative body shall state the title of or otherwise specifically identify the litigation to be discussed, unless to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or jeopardize its ability to conclude existing settlement negotiations to its advantage.

A recent case determined that the litigation exemption under the Brown Act did not apply to a city's closed session where it approved a settlement agreement involving litigation of a subdivision map. The case, *Trancas Property Owners Association v. City of Malibu*, involved a land use dispute between the city and a local owner-developer. The city had approved two tentative subdivision maps for several developments in 1985, subject to various conditions that needed to be fulfilled to obtain the final subdivision maps. When the owner submitted proposed final subdivision maps in 1993, the city denied their approval, claiming that the tentative maps had expired. The owner sued and litigation commenced. The city and the owner made several attempts to settle the matter and, after the city met in closed session, entered into a written agreement for the city to rescind the disapproval of the subdivision maps. The city further agreed to approve one of the maps and to exempt a downsized development from certain present or future zoning restrictions in exchange for the owner agreeing to dedicate three-fourths of its acreage to the city and dismiss its lawsuit. The court found that the adoption of agreement in closed session violated the Brown Act because the settlement involved provisions for future actions that would ordinarily be subject to the Brown Act's open meeting requirement (e.g., rescission of the disapproval of the proposed final subdivision maps), or were required by law to be made after public hearings (e.g., whether to grant a zoning variance).⁴⁴

C. CLOSED SESSION BECAUSE OF SECURITY THREAT OR FOR PUBLIC SAFETY REASONS

Section 54957 provides that a legislative body may hold a closed session with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

D. CLOSED SESSION FOR CERTAIN PERSONNEL MATTERS

Section 54957 provides that a legislative body may hold a 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. However, 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. The notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. To reiterate, an employee has the right to receive

24-hour notice only when the body is considering complaints and charges brought by a third person or an employee.⁴⁵ *If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.*

The legislative body 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.

The term “employee” includes an officer or an independent contractor who functions as an officer or an employee but does not include any elected official, member of a legislative body, or other independent contractors. Thus, department heads and other high-ranking local officers are included in the definition of “employee.” However, complaints against elected officers, or persons appointed to fill a vacancy in an elected office may not be discussed in closed session.⁴⁶

Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation, except for a reduction of compensation that results from the imposition of discipline.

These provisions have been the subject of extensive litigation in recent years.

- Negative performance evaluations do not constitute “complaints or charges” against an employee under § 54957. Therefore, a public employer may consider in closed session whether to retain an employee based on such performance evaluations despite the employee’s request to respond in open session.⁴⁷
- In a recent case, the court found that a reference to performance goals in an employment contract does not require disclosure of the performance goals as part of the employment contract under the Public Records Act. An employment contract for the Superintendent of the Community College District included a provision for an annual written evaluation by the Government Board. The president of the District’s faculty union sought disclosure of the Superintendent’s personal performance goals under the Public Records Act as they were referenced in the employment contract, a document that may be released under the Act. The court disagreed and found that, while the performance goals were referenced in the contract, they were not incorporated into the contract. The goals also constituted a “personnel file or other ‘similar’ file” within the meaning of the Public Records Act and thus were expressly protected from disclosure.⁴⁸
- A recent attorney general opinion determined that medical records submitted in connection with an application for disability retirement may be evaluated in closed session. The attorney general treated an application for disability retirement as a decision on whether or not the employee would be terminated. Thus, the “personnel exception” applied to permit a closed session. The attorney general also found that the board may permit the applicant and his/her representative to be present at the closed session where

the applicant's medical records are discussed, as long as the applicant has an official or essential role to play in the closed session.⁴⁹

- In addition, a legislative body's evaluation of performance in a closed session is not limited to the formal, periodic review of the employee's job performance. Rather, evaluation of performance in closed session may include an examination of particular instances of job performance, consideration of the criteria for such evaluation, the process for conducting the evaluation and other preliminary matters which constitute an exercise of the body's discretion in evaluating a particular employee.⁵⁰
- One Court of Appeal held that a school district must give a teacher 24-hour notice prior to meeting in closed session to consider specific complaints or charges brought against the teacher by another person or employee. Craig Bell was both a teacher and head football coach in the Vista Unified School District. As the football coach, he was paid a stipend over and above his teacher's salary. As a result of Bell's actions on behalf of a particular student, the California Interscholastic Federation (CIF) determined that the student was ineligible to play football and recommended to the District that it consider disciplinary action against Bell and others. The District Board of Trustees held a closed session board meeting to consider action in response to the CIF determination. The District did not give Bell 24-hour notice of this meeting. The Court of Appeal found that the CIF report constituted a "charge or complaint brought by another" to which Bell should have been permitted to respond. The Court suggested that, after giving Bell an opportunity to respond, the Board could have gone into closed session, evaluated the complaint, and if necessary, decided upon appropriate discipline. The Court emphasized that, while 24-hour notice must be given prior to holding a "closed session on specific complaints or charges brought against an employee by **another person or employee**," the majority of personnel decisions may be discussed freely and candidly in closed session. The court made a sharp distinction between a closed session held to consider discipline or dismissal of a public employee and a closed session held on specific complaints or charges brought against an employee by another person or employee. With respect to the former, the legislative body of a local agency is not required to give 24-hours notice under Government Code Section 54957; with respect to the latter, such notice is required.⁵¹
- Another Court of Appeal has held that where the governing body of a public entity, in a case involving employee discipline, rejects its hearing officer's findings of fact and engages in its own fact finding, it is conducting a "hearing" on the charges against the employee for purposes of Section 54957.⁵²

Sybil Morrison was terminated by the Housing Authority for the City of Los Angeles (HACLA). Morrison appealed her termination to the HACLA Board of Commissioners, who delegated the appeal to a Hearing Officer who was to make a recommendation to the Board. The Hearing

Officer recommended less severe discipline against Morrison. The Commissioners met in closed session to discuss the Hearing Officer's findings. Though the Commissioners gave a general public notice of the meeting in which they considered the Hearing Officer's recommendation, the Commissioners did not personally serve advance notice to Morrison of her right to demand an open session. The Commissioners took no action on the matter during the meeting. The Commissioners thereafter held an open session regarding Morrison's discipline in which the Commissioners heard extensive testimony from both sides.

Morrison contended that the Commissioners violated the Brown Act by failing to give her 24 hours notice of her right to request an open session as required by the Act. The Court determined that during the closed session, the Commissioners reviewed the record of the proceedings before the Hearing Officer and discussed the matter. The Court determined this triggered the obligation to provide Morrison 24-hour notice of her right to request an open session. Though the Commissioners did grant Morrison an open session shortly thereafter, the Court concluded that this did not cure the earlier violation of the Act.

- Failure to properly label a closed session on a personnel decision may make the decision null and void. In a recent case, the City of King City held a special meeting. On the agenda for the meeting was a single item: "Per Government Code Section 54957 Public Employee (employment contract)." The minutes for the meeting stated that there was "no reported action taken in closed session." Several days following the meeting, the city manager gave the finance director, Roberto Moreno, a two-page memorandum that stated Moreno was being terminated and detailed five alleged incidents of Moreno's misconduct. Moreno was given no opportunity to respond to the accusations before his termination became effective.

Moreno filed a tort claim for wrongful termination, alleging that the City violated the Brown Act by failing to notify him that the City would be considering his employment or any charges against him and by failing to specify such items on the agenda. The City denied his claim and Moreno filed a petition for writ of mandate with the trial court to have his termination declared null and void in violation of the Brown Act. The trial court granted Moreno's petition and awarded Moreno damages, fees and costs.

The Court of Appeal affirmed, finding that the City could have provided Moreno with sufficient notice of the reason for the special meeting without violating Moreno's right to privacy. The Court suggested that an agenda statement such as "Public Employee Dismissal" would have been sufficient under the Brown Act. The Court of Appeal also found that while a public agency may discuss an employee's performance evaluation in closed session or consider whether to dismiss an employee, an employee must receive advance notice of the hearing when these discussions will consider specific complaints, charges, or accusations against the employee. Here, the city manager had presented the Council with a document that detailed five accusations of misconduct by Moreno and sought approval of Moreno's

termination. Moreno was entitled to advance notice of the hearing and an opportunity to respond.⁵³

- The evaluation of probationary teachers does not constitute the bringing of “specific complaints or charges,” and therefore, probationary teachers are not entitled to notice nor have the right to request an open session of the school board meeting in which the decision to re-elect or not re-elect the probationary teachers will be made.⁵⁴

The legislative body’s review of a probationary employee to determine whether the employee will pass probation does not involve complaints or charges and the employee has no right to be present in a closed session.⁵⁵

- Even if an employee requests that a hearing on “complaints and charges” against him shall be conducted in open session, the local agency legislative body may conduct its deliberations (whether it has heard the matter or if it is considering whether to adopt a hearing officer’s findings) in closed session, and the affected employee is not entitled to 24 hours notice of the closed session.⁵⁶
- The California Attorney General has ruled that when the members of a school district governing board discuss whether to employ a probationary certificated employee for a third consecutive school year, the employee may not require that the discussion be held in public.⁵⁷

SAMPLE NOTICE OF RIGHT TO HAVE CHARGE(S) HEARD

Notice of Right to have Charge(s*) Heard in Open Session Rather than Closed Session

PLEASE TAKE NOTICE that the Board of Trustees of _____ is scheduled to hear a charge(s) against you at its next scheduled meeting of _____ at 7:00 p.m., ** located at the _____. ***

Pursuant to Government Code § 54957, you have the right to have the charge(s) heard by the Board of Trustees in an open public session, rather than a closed session.

If you desire to have the charge(s) heard by the Board of Trustees in an open session, please sign this form below indicating your desire to have the charge(s) heard in open session, and return the signed form to _____, at _____ address _____ prior to the time of the scheduled meeting. Please be advised that if you do not complete the form below requesting that the charge(s) be heard in an open session prior to the commencement of the scheduled meeting, the charge(s) will be heard by the Board in closed session.

I request that the charge(s) against me be heard by the Board of Trustees in an open session at its meeting of _____, at 7:00 p.m.

Date & Time

Employee Signature

* The Notice will either state Complaint(s) or Charge(s).

** Since this notice must be received by the employee at least 24 hours prior to the meeting, the date and time for the meeting should be at least 24 hours after the notice is delivered. We recommend that the notice be personally served to ensure that the 24 hour notice is provided.

*** The place should not only include the room, but the address as well.

The ability of a legislative body to hold a closed session to discuss personnel matters is confined to items concerning a particular employee. Thus, discussions concerning the creation of a new position and the workload of existing positions could not be held in closed session.⁵⁸ In addition, consideration of a teacher layoff policy must be conducted in open session.⁵⁹

E. CLOSED SESSION TO DISCUSS LABOR RELATIONS

Section 54957.6 provides that a legislative body may hold a closed session meeting with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees. Such closed session meetings shall be for the purpose of reviewing the legislative body's position and instructing the local agency's designated representatives. Closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees. A legislative body may also meet with a state conciliator who has intervened in the proceedings.

With respect to the agency's represented employees, a closed session may be held to allow any local agency to meet with its designated representatives to discuss *any other matters related to their represented employees within the statutorily-provided scope of representation.*

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 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.

F. CLOSED SESSIONS TO REVIEW LICENSE APPLICATIONS OF AN INDIVIDUAL WITH A CRIMINAL RECORD

Section 54956.7 provides that whenever a legislative body 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, it 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, as a result of the closed session, the legislative body determines that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If withdrawn, 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 kept 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. However, all matters related to the closed session are confidential and shall not be disclosed without the applicant's consent, except in an action by an applicant who has been denied a license challenging the denial of the license.

G. CLOSED SESSION REGARDING REAL PROPERTY TRANSACTIONS

Section 54956.8 provides that a legislative body may hold a closed session with its negotiator prior to the purchase, sale, exchange or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange or lease.

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

The legislative body of the local agency may not, however, decide or agree upon matters in closed session that must be subject to the open meetings requirements of the Brown Act.⁶⁰ For example, the legislative body cannot agree to rescind disapproval of a proposed final subdivision map or agree to grant zoning concessions in exchange for an agreement to donate property.⁶¹

H. CLOSED SESSION BY COUNTY BOARD OF SUPERVISORS FOR THE PURPOSE OF DISCUSSION OR TAKING ACTION ON HEALTH PLAN TRADE SECRETS

Section 54956.87 allows a County Board of Supervisors to conduct a closed session meeting for the purpose of discussion or taking action on health plan trade secrets. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

I. CLOSED SESSION FOR JOINT POWERS AGENCY FORMED FOR INSURANCE POOLING LIABILITY

Section 54956.95 provides that a joint powers agency formed for purposes of insurance pooling or a local agency member of a joint powers agency, may hold a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency.

This section also permits a local agency self-insurance authority or a local agency member of the authority to hold a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member.

J. CLOSED SESSION BY A MULTI-JURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

Section 54957.8 provides that the legislative body of a multi-jurisdictional drug law enforcement agency, or an advisory body of such agency may hold closed sessions to discuss the case records of any ongoing criminal investigation of the agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

K. CLOSED SESSION BY LOCAL AGENCY PROVIDING HEALTH CARE SERVICES TO HEAR CHARGES OR COMPLAINTS FROM MEMBERS OF THE LOCAL AGENCY HEALTH PLAN

Section 54956.86 provides that a legislative body of a local agency which provides services pursuant to Welfare and Institutions Code § 14087.3 may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his/her name, medical status or other information that is protected by federal law publicly disclosed. Prior to holding a closed session 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 open session rather than closed session.

L. CLOSED SESSION BY A SCHOOL DISTRICT TO CONSIDER STUDENT DISCIPLINE

A school district governing board may hold a closed session to consider the suspension of, disciplinary action against, or any other action against, except expulsion, of a student if a public hearing would lead to the giving out of information which would be a violation of the pupil's privacy.

Before calling a closed session to consider such action against a pupil, the governing board shall, in writing, by registered or certified mail, or personal service, notify the pupil and the pupil's parent or guardian, or the pupil if the pupil is an adult, of the intent of the governing board to call and hold a closed session. Unless the pupil or the pupil's parent or guardian, in writing, within 48 hours of receipt of the written notice of the Board's intention, request that the hearing be held a public meeting, the hearing to consider these matters shall be conducted by the governing board in closed session.⁶²

M. CLOSED SESSIONS BY SCHOOL OR COMMUNITY COLLEGE DISTRICT BOARD RE: LABOR NEGOTIATIONS

Even though the Brown Act now permits a legislative body to go into closed session to discuss with their designated representatives any matters related to their represented employees within the statutorily-provided scope of representation, there is a separate section contained in the Educational Employment Relations Act, Government Code § 3549.1 (the Rodda Act), which also permits the legislative body of a school or community college district to go into a closed session to discuss certain matters related to labor negotiations.

The following four types of closed session meetings are permitted:

- 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 factfinder or arbitrator;
- Any executive session of the public school employer or between the 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.

N. PERMISSIBLE CLOSED SESSIONS FOR SCHOOL AND COMMUNITY COLLEGE DISTRICTS

Section 54962 also provides that any exception to the open meeting requirement contained in the Education Code pertaining to school districts and community college districts is a permissible closed session under the Brown Act.

A. CLOSED SESSION DESCRIPTIONS IN THE AGENDA: REQUIRED ELEMENTS

As stated above, the agenda must include items to be discussed in closed session. Section 54954.5 provides a format for describing various closed session items. No legislative body or elected official shall be in violation of § 54954.2 (the agenda requirements under the Act) or § 54956 (obligations with respect to special meetings) if the closed session items are described in “substantial compliance” with § 54954.5. Substantial compliance is satisfied by including the information provided below, irrespective of format.

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

<p><u>License/Permit Determination:</u></p> <p>Applicant(s): _____ <i>(Specify number of applicants)</i></p>
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With respect to every item of business to be discussed in closed session pursuant to § 54956.8 (Conference with Real Property Negotiators):

<p><u>Conference with Real Property - Negotiator</u></p> <p>Property: _____ <i>(Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation.)</i></p> <p>Agency Negotiator: _____ <i>(Specify names of negotiators attending to closed session.) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at all open sessions half prior to the closed session.)</i></p> <p>Negotiating Parties: _____ <i>(Specify name of party (not agent).)</i></p> <p>Under Negotiation: _____ <i>(Specify whether instruction to negotiator will concern price, terms of payment, or both.)</i></p>

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

Conference with Legal Counsel – Existing Litigation

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

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

Conference with Legal Counsel – Anticipated Litigation

Significant exposure to litigation pursuant to Section 54956.9(b): _____
(Specify number of potential cases)

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

In addition to 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 § 54956.9(b)(3)(B) to (E) inclusive. These subsections relate to the issue of what existing facts and circumstances exist to demonstrate that there is a significant exposure to litigation. Thus, there may be an obligation to include within the closed session description or as an oral statement prior to the closed session, which subsection of § 54956.9(b)(3)(B) - (E) is satisfied.

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

Liability Claims

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

Agency claimed against: _____
(Specify name)

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

Threat to Public Services or Facilities

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

Public Employee Appointment

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

Public Employment

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

Public Employee Performance Evaluation

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

Public Employee Discipline/Dismissal/Release

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

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

Conference with Labor Negotiator

Agency designated representatives: _____
(Specify names of designated representatives attending the closed session)

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

OR

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

With respect to closed sessions called pursuant to § 54957.8 (Multi-Jurisdictional Drug Law Enforcement Agency):

Case Review/Planning

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

With respect to every item of business discussed in closed session pursuant to §§ 1461 (hospital medical audit or quality assurance committees), 32106 (hospital district board of directors meetings), and 32155 (hearings regarding actions affecting the professional privileges of medical staff) of the Health and Safety Code or §§ 37606 (City board of hospital trustees meetings) and 37624.3 (City hospital hearing on the reports of the hospital medical audit or quality assurance committees) 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)

With respect to every item of business to be discussed in closed session pursuant to § 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)

B. ANNOUNCEMENT BEFORE CLOSED SESSIONS

Section 54957.7 provides that in addition to the agenda requirements relating to closed session meetings, prior to holding any closed session, the legislative body shall disclose, in an open meeting, the item or items to be discussed in the closed session, and shall state the general reason(s) for the closed session, and may cite the statutory authority or other legal authority

under which the session is being held. The disclosure of the item or items to be discussed 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.

In the case of special, adjourned, and continued meetings, the statement must be made as part of the notice providing for the meeting.

After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by § 54957.1 of actions taken in the closed session.

The announcements required to be made in open session pursuant to § 54957.7 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.

Sample Call for a Closed Session in Accordance with Government Code §§ 54956.8 and 54956.9(A), (B), and (C)

May I have a motion to adjourn/recess to closed session in accordance with Government Code §§ 54956.8, 54956.9(a) [and/or (b), and/or (c), as appropriate]. The Board will meet in closed session to receive advice from its attorney regarding the following litigation:

- 1) Fudd v. City of Bugs - Case No. 633451, Pending Litigation;
- 2) Significant exposure to litigation against the agency; and/or
- 3) Decision by the agency whether to initiate litigation.

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

- 1) Yosemite Sam Elementary School, 463 Rooting Tooting Lane

Note: This form must be used in conjunction with the closed session descriptions which are now required to be included in the agenda, or publicly announced.

C. MINUTE BOOK RECORD OF CLOSED SESSIONS; NO PUBLIC INSPECTION

Section 54957.2 provides that the legislative body may, by ordinance or resolution, designate a clerk or other officer or employee to attend each closed session and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book is not a public record pursuant to the California Public Records Act and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of the Act is alleged to have occurred at a closed session, to a court. The minute book may, but need

not, consist of a recording of the closed session. Note that Section 54957.2 does not require that a minute book be kept. The minutes of an improper closed session are not confidential.⁶³

D. ATTENDEES OF CLOSED SESSIONS

Closed meetings should usually involve only the members of the legislative body of the local agency, plus any additional support staff required or any witnesses. Individuals not necessary to the meeting should be excluded.

E. PUBLIC REPORT OF ACTION TAKEN FOLLOWING A CLOSED SESSION MEETING

Section 54957.1 provides that the legislative body of any local agency must publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

Real Estate Negotiations

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

Seeking Appellate Review; Amicus Curie

- 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 curie in any form of litigation as the result of a consultation under § 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.

Settlement of Litigation

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

- 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.
- 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.

Disposition of Claims

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

Personnel Decisions

- 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 § 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this section shall identify the title of the position. The general requirement of this section 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.

Labor Negotiations

- 6) Approval of an agreement concluding labor negotiations with represented employees pursuant to § 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(s) approved and the other party or parties to the negotiation.

Reports required by Section 54957.1 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, 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 orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

The documentation referred to in the above paragraph 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.

Section 54957.1 does not require the legislative body to approve actions not otherwise subject to legislative body approval.

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 Section 54957.1.

F. NO PERSONAL RECOLLECTIONS OF CLOSED SESSION MEETINGS MUST BE DISCLOSED

Closed session meetings of the governing bodies of public agencies subject to the Brown Act are confidential, and disclosure of the personal recollections of those members cannot be compelled in discovery whether or not the meeting was noticed in compliance with the Act.⁶⁴

Furthermore, individual members of a legislative body are not permitted to disclose the contents of a closed session unless authorized by law to do so.⁶⁵ A variety of actions may be imposed against an individual who discloses the contents of a closed session.

In one recent case, a District's board of directors adjourned during a special meeting to closed session to discuss a personnel matter. Upon returning to open session, the Board's president, Jaime Bonilla, moved to terminate the general counsel for the District, Thomas Harron. Another board member, Antonio Inocentes, seconded the motion. The board did not hold a discussion in open session as to the reason for the termination.

Immediately after the special meeting, Bonilla and Inocentes spoke to a newsreporter about the termination of the general counsel. Bonilla stated, "It's not necessarily for cause. It's a matter of trust. The Board just didn't trust Harron. That's the basic bottom line." Inocentes stated that he "felt Harron had a conflict of interest." Harron sued Bonilla and Inocentes for slander and Bonilla and Inocentes countered with special motions to strike Harron's complaint under the anti-SLAPP statute. The trial court denied the motions and the court of appeals affirmed.

The court of appeals found that Bonilla had admitted in his deposition to speaking with a newsreporter about matters discussed in closed session. This violated the Brown Act and, as Bonilla was forbidden from divulging the nature of closed session discussions, his speech was not protected as a matter of law. Although the other board member, Inocentes, testified that he formed his opinion about Harron prior to the closed meeting discussions, given the proximity in time between the closed session and his public airing of his grievances against Harron, Harron had been deprived of a public forum in which to defend against the claim of conflict of interest and untrustworthiness. Thus, Inocentes also failed to show that his speech was protected under the anti-SLAPP statute.⁶⁶

G. SANCTIONS AGAINST PERSON DISCLOSING CONFIDENTIAL INFORMATION ACQUIRED DURING CLOSED SESSION

A recent amendment to the Brown Act provides that no person may disclose confidential information that was acquired by being present in a closed session authorized by Section 54956.7 (license application for rehabilitated criminal), Section 54956.86 (health claims), Section 54956.8 (real property negotiations), Section 54956.87 (county health plan), Section 54956.9 (pending litigation), Section 54957 (personnel and threat to personal safety), Section 54957.6 (labor negotiations), Section 54957.8 (multijurisdictional drug enforcement agency) and 54957.10 (Deferred Compensation Plan).⁶⁷

“Confidential Information” is defined as 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 the Act.

Violations of this Section include (1) injunctive relief to prevent disclosure of confidential information, (2) disciplinary action against an employee who has willfully disclosed confidential information, (3) referral of a member of a legislative body who has willfully disclosed confidential information to the grand jury.

Before an employee is disciplined for violation of this Section, the employee must have received training as to the requirements of the Section or otherwise have been given notice of the requirements of the Section.

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

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

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

SECTION 10 **REMEDIES FOR VIOLATION OF ACT**

Section 54959 provides that each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision 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 is guilty of a misdemeanor.

A. MAY A LEGISLATIVE BODY BE SUED TO PREVENT OR STOP VIOLATIONS OF THE ACT?

Section 54960 provides that the district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief to stop or prevent violations or threatened violations of the Act by members of a legislative body or to determine the applicability of the Act to actions or threatened future action of the legislative body or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions.

A court, upon a judgment of a violation of §§ 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6 (the closed session provisions of the Act), may order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

B. PROCESS BY WHICH A LEGISLATIVE BODY MAY BE SUED FOR UNLAWFUL ACTION

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 in violation of §§ 54953 (requiring open meetings), 54954.2 (requiring posting of agenda), 54954.5 ((requiring description of closed session matters on agenda), 54954.6 (outlining procedures for meetings re: new taxes and/or assessments), or 54956 (governing special meetings) is null and void pursuant to Section 54960.1. A legislative body may cure or correct an action challenged pursuant to Section 54960.1.

Prior to any action being commenced, the district attorney or interested person demand of the legislative body to cure or correct the unlawful action alleged to have been taken. The demand shall be in writing and shall clearly describe the challenged action of the legislative body and nature of the alleged violation. The written demand shall be made within 90 days from the date the action was taken. However, if the alleged unlawful action was taken in open session but in violation of the agenda requirements of the Act (§ 54954.2), the written demand must be filed within 30 days from the date the action was taken.

Within 30 days of receipt of the demand, the legislative body must cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the

demanding party in writing of its decision not to cure or correct the challenged action. If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action shall commence to run the day after the 30-day period to cure or correct expires. Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not 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 or thereafter be barred from commencing the action.

The California Supreme Court has held that under the Bagley-Keene Open Meeting Act, which is similar in many ways to the Brown Act, the actions of the governing body of a state agency cannot be challenged under any circumstances after more than 30 days have passed.⁶⁸

An action taken violates §§ 54953, 54954.2, 54954.5, 54954.6, and 54956 shall not be determined to be null and void if any of the following conditions exist:

- The action taken was in substantial compliance with the section allegedly violated;
- 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;
- The action taken gave rise to a contractual obligation, including a contract let by competitive bid, upon which a party has, in good faith detrimentally relied;
- The action taken was in connection with the collection of any tax;
- 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;
- Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with § 54954.2(a) (the agenda requirement) because of any defect, error, irregularity, or omission in the notice given pursuant to the provision had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken under this provision.
- Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with § 54956 (calling special meeting) because of any defect, error, irregularity, or omission in the notice given pursuant to the provision, had actual notice of the item of business 24 hours prior to the meeting at which the action was taken under this provision.

- Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with § 54956.5 (calling emergency meetings) because of any defect, error, irregularity, or omission in the notice given pursuant to the provision, had actual notice of the item of business prior to the meeting at which the action was taken under this provision.

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

The fact that a legislative body takes a subsequent action to cure or correct an action taken shall not be construed or admissible as evidence of a violation of the Act.

C. DISCOVERY PROCEDURES FOR CLOSED SESSION TAPES ORDERED BY THE COURT

In any case in which discovery or disclosure of the tape is sought by either the district attorney or a plaintiff in a civil action pursuant to §§ 54959, 54960, or 54960.1 alleging that a violation of the Act has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with a court with notice to the governmental agency which has custody and control of the tape recording.

The notice shall include, in addition to the items required by *Code of Civil Procedure*, § 1010, all of the following:

- Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording;
- An affidavit which contains specific facts indicating that a violation of the Act occurred in the closed session;
- If the court finds that there is good cause to believe that a violation has occurred, the court may review the recording of that portion of the closed session alleged to have violated the Act;
- If, following the 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 the Act, the court shall, make a certified transcript of the portion of the recording a public exhibit in the proceeding;
- Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

D. COSTS AND ATTORNEY FEES FOR A SUCCESSFUL SUIT AGAINST A LEGISLATIVE BODY FOR VIOLATING THE BROWN ACT

Section 54960.5 provides that a court may award court costs and reasonable attorney fees to the plaintiff in any action for violation of the Act where it is found that the legislative body violated the Act. The costs and fees must be paid by the local agency and shall not become a personal liability of any public officer or employee of the agency.

A court may award court costs and attorney fees to a defendant in any action 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.

SECTION 11 MADDY ACT

Government Code section 54970, et seq., known as the Maddy Local Appointive List Act of 1975 (“Maddy Act”) sets forth the procedural requirements that must be met to fill a vacancy for an appointed position. The purpose of this Act is to give notice to the general public of an appointment vacancy so that all members of the public have an opportunity to apply for the position.

On or before December 31 of each year, each legislative body prepares a Local Appointment List. This lists contains the list of appointments for all regular and ongoing boards, commissions, and committees of the local agency of the legislative body. This list must include:

- a list of all appointment terms which will expire during the next calendar year;
- the name of the incumbent appointee, date of appointment, date the term expires, and necessary qualifications for the position; and
- a list of all boards, commissions and committees who serve at the pleasure of the legislative body and the necessary qualifications for each position.⁶⁹

This List is made available to the public for a fee. The fee must be reasonable and not exceed actual cost. The legislative body also designates a public library which will receive the List, which is the public library that serves the largest population in the jurisdiction of the legislative body.⁷⁰

In the event of an unscheduled vacancy, a special vacancy notice must be posted in the office of the clerk of the local agency, the library designated by the legislative body, and in other places designated by the legislative body, “not earlier than 20 days before or not later than 20 days after the vacancy occurs.”⁷¹ The legislative body must wait “at least 10 working days after the posting of the notice in the clerk’s office” before the final appointment to the board, commission, or committee can be made.⁷² However, notwithstanding the above rule, the legislature may fill an

unscheduled vacancy immediately “if it finds that an emergency exists.”⁷³ However, the person appointed pursuant to the emergency exception shall only fill the position on an acting basis until the final appointment is made pursuant to the non-emergency appointment process.⁷⁴

Public Records Act

SECTION 1 INTRODUCTION

The California Public Records Act (“CPRA”) (Government Code Section 6250 *et. seq.*) was designed to give the public access to information in the possession of public agencies.⁷⁵ Like the federal Freedom of Information Act (5 U.S.C. Section 552 *et seq.*) upon which it was modeled, the general policy of the Act favors disclosure.⁷⁶

However, the CPRA recognizes that the public’s right to disclosure of information held by public agencies is not absolute because the CPRA also protects individual privacy.⁷⁷

CAN A PUBLIC AGENCY CREATE GREATER ACCESS RIGHTS?

Pursuant to Section 6253(e), state or local agency is permitted to adopt requirements which allow for faster, more efficient or greater access to records than the requirements prescribed by the minimum standards set forth in the CPRA.

SECTION 2 WHAT IS A PUBLIC RECORD UNDER THE ACT

The Act defines public records as “any writing[s] containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.”⁷⁸ California courts have broadly construed the definition of “public records” and at least one court has stated:

*This definition is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record keeping instrument as it is developed. Only purely personal information unrelated to the conduct of the public’s business could be considered exempt from the definition, i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities.*⁷⁹

In addition a writing is defined as handwriting, typewriting, printing, photostating, photography, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created regardless of the manner in which the record has been stored.⁸⁰

The definition of “public record” under the Act is broad and intended to cover every conceivable kind of record that is involved in the governmental process.⁸¹

A. FINANCIAL RECORDS

Financial data relied on by the agency may be subject to disclosure where there is no showing that the disclosure of this information was against public interest, or that injury to the city would result from revealing data.⁸² (Section 6259(k).)

B. PENDING LITIGATION RECORDS

Records that are generated in the ordinary course of a public agency's business which may be relevant in future litigation to which the agency might be a party are subject to disclosure under subdivision (b) of Section 6254 prior to a claim being filed with the agency or litigation is commenced against it. Furthermore, such records do not become exempt from disclosure under subdivision (b) once a claim is filed or litigation commences against the agency.⁸³

The phrase "pending litigation" contained in Section 6254(b) refers to the records of a public agency specifically prepared for litigation to which the agency is a party. It protects the work product of both the public entity and its attorney.⁸⁴ Also, when records are sought by persons or entities outside of the litigation, it protects litigation-related documents (e.g., correspondence, communications, etc. received from, or sent to, opposing counsel), which the parties do not intend to be revealed outside the litigation.⁸⁵ Counsel in litigation involving government entities should make clear their intent to keep the communications confidential from persons outside of the litigation by, e.g., placing a heading on the correspondence that it is meant to be confidential and not to be disclosed to others outside of the litigation.⁸⁶ A claim filed against a public agency under the California Tort Claims Act (Government Code Section 810 *et seq.*) is not exempt from disclosure under Section 6254(b).⁸⁷

C. PERSONNEL RECORDS

Personnel records are only exempt from disclosure under Section 6254 where the disclosure of these records would subject the individual to an unwarranted invasion of privacy.⁸⁸

Section 6254(c) exempts personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. Under Government Code Section 6254.3, the home address and home telephone numbers of state employees shall not be open to public inspection, except in specifically delineated situations. However, the Act also provides that employment contracts between a public employer and a public official/employee are public records. (Section 6254.8). California courts have construed the statutory exemptions narrowly in order to accomplish the general policy of disclosure.⁸⁹

In the *Braun v. City of Taft* decision, the court held that two letters in an employee's personnel file which appointed that employee to a certain position and then rescinded it were public records because the letters constituted an employment contract. The Court in *Braun* also stated that Section 6254 cannot be interpreted as exempting an entire file from disclosure where only a portion of the file contains documents whose disclosure would constitute an unwarranted invasion of privacy.

The *Braun* case was decided in 1984 and policy considerations since that time have resulted in a split of judicial authority regarding whether and to what extent personnel records are to be considered public records. In Section 5 (A 2) below we have analyzed these cases. We recommend that whenever personnel records are sought and there is no waiver from the affected employee or employees, you should seek advice of counsel on the matter.

D. COMMUNICATIONS RECEIVED FROM LEGAL COUNSEL

The disclosure of a memorandum submitted to a state body or to the legislative body of a local agency by its legal counsel is not required until the pending litigation has been finally adjudicated or otherwise settled. The memorandum shall be protected by the attorney work-product privilege until the pending litigation has been finally adjudged or otherwise settled. (Section 6254.25.)

E. EMPLOYMENT CONTRACTS BETWEEN STATE OR LOCAL AGENCY AND PUBLIC OFFICIAL OR EMPLOYEE

Every employment contract between a state or local agency and any public official or public employee is a public record which is not exempt from disclosure. (Section 6254.8) Further, Section 54957.1 of the Brown Act requires a legislative body of a local agency to publicly report at its next public meeting any action taken concerning employment of a public employee arising out of any closed session of that legislative body.⁹⁰

F. TOTAL EXPENDITURES AND DISBURSEMENTS

An itemized statement of the total expenditures and disbursement of any agency provided for in Article VI of the California Constitution shall be open for inspection. (Section 6261.)

SECTION 3 INSPECTION OF PUBLIC RECORDS

Pursuant to Section 6253, public records are open to public inspection at all times during the business hours of the state or local agency. Every person has the right to inspect any public record, with certain exceptions. Every agency may adopt regulations stating the procedures to be followed when making public records available.⁹¹ Even though portions of the public records may be exempt from disclosure under the Act, the agency must make available any “reasonably segregable” portion of the record after deletions of the exempt portions. Certain specified state and local bodies listed in Section 6253.4 are required to establish written guidelines for accessibility of public records. A copy of these guidelines must be posted in a conspicuous public place at the office of the agency, and a copy must be available upon request at no charge to the requesting person.

SECTION 4 **REQUEST FOR COPIES**

Pursuant to Section 6253(b), except with respect to public records exempt from disclosure, each state or local agency upon request for a copy of public records that reasonably describes an identifiable record or records is required to make the records promptly available to any person upon payment of fees covering direct costs of duplication or a statutory fee if applicable.

A. MAY ANY PERSON OBTAIN COPIES OF RECORDS?

Any person is entitled to receive an exact copy of any identifiable public record unless it is impracticable to do so.⁹² Computer data is to be provided in a form determined by the agency.⁹³

If a record is public in nature, then all persons have access to the record. The fact that a particular person is the subject of the record(s) sought does not create a greater right to said record(s), and he or she has no right to prevent the disclosure of said record(s) to any other person.⁹⁴ Also, the minutes of a regular or special meeting of a public agency are public records open to inspection by any citizen of the state.⁹⁵

B. WHAT ARE THE REQUIREMENTS FOR RESPONDING TO A REQUEST FOR RECORDS?

Section 6253 provides that each agency upon a request for a copy of records shall determine within 10 days after receipt of such request whether the request in whole or in part seeks copies of disclosable public records in the possession of the agency and shall immediately notify the person making the request of such determination and reasons therefore.

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

C. WHAT ARE THE CIRCUMSTANCES?

“Unusual circumstances” within the meaning of the Act are:

- The need to search for and collect the requested records from field facilities or other establishments that are separate from the office that is processing the request.
- The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination

of the request among two or more components of the agency having substantial subject matter interest therein.

- The need to compile data, to write programming language or a computer program or to construct a computer report to extract data. (Section 6253(c))

D. DENIAL OF A REQUEST FOR RECORDS

Any notification of denial of any request for records must set forth the names and titles or positions of each person responsible for the denial. (Section 6253(d))

SECTION 5 EXEMPT RECORDS

A. WHAT RECORDS ARE EXEMPT FROM DISCLOSURE UNDER THE ACT?

Section 6254 provides exemptions to the disclosure requirements of the Act. The exemptions set forth in the Act are to be narrowly construed and the agency opposing disclosure bears the burden that a specific exemption set forth in the Act applies.⁹⁶

The following records are specifically exempt from disclosure under the Act:

1. EXEMPT RECORDS

Section 6254 identifies several categories of records that are exempt from disclosure under the Act. These categories are set forth below:

- a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.
- b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (Tort Claims Act), until the pending litigation or claim has been finally adjudicated or otherwise settled. (Discussed above.)
- c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. (Discussed above.)
- d) The contents of the following:
 - 1) Application to any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions. Included are banks, savings and loans associations, industrial loan companies, credit unions, and insurance companies.

- 2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referenced in paragraph (1) above.
- 3) The preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of any state agency referenced in paragraph (1) above.
- 4) Information confidentially received by any state agency referred to in paragraph (1) above.
- e) Geological or geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.
- f) Records of complaints to, investigations conducted by, or records of intelligence information or security procedures of the Attorney General and the Department of Justice, and any state or local police agency. Also exempt from disclosure under the Act are investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes.

***Note:** State and local law enforcement agencies are required to disclose the names and addresses of persons involved in an incident, as well as the names and address of witnesses, other than confidential informants. Certain factual information must also be disclosed, provided disclosure will not endanger the successful completion of the investigation or reflect the analysis or conclusions of the investigation officer. State and local agencies are also required to disclose information regarding an individual arrested by the agency.*

- g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the Education Code.
- h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. The law of eminent domain, however, shall not be affected by this provision.
- i) Information required from any taxpayer in connection with the collection of local taxes which is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.
- j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries and library and museum materials made or acquired and presented

solely for reference or exhibition purposes. This exemption does not prohibit the disclosure of fines imposed on the borrowers.

- k) Records which are exempted or prohibited pursuant to provisions of federal or state law, including but not limited to, Evidence Code provisions relating to privilege.
- l) Correspondence of and to the Governor or the employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary. This exemption is subject to the provision that the public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provision of this chapter.
- m) Records in the custody of or maintained by the Legislative Counsel.
- n) Statements of personal worth or personal financial data required by a licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.
- o) Financial data contained in applications for financing under the Health and Safety Code, where it has been determined by an authorized officer of the California Pollution Control Financing Authority that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration.

2. PERSONNEL FILES

In a recent case involving a request for disclosure of employee disciplinary records, the Third District Court of Appeal narrowly interpreted the personnel records exception.⁹⁷ In *Bakersfield City School District v. Superior Court*, a school district challenged a newspaper's request for the disciplinary records of a district administrator. The Superior Court reviewed the personnel records and determined that documents relating to an alleged incident of a sexual, violent nature must be disclosed, even though no discipline resulted from the allegations.⁹⁸ On appeal, the Court found that public employee's right to privacy in employment records did not outweigh the public right to know of the alleged wrongdoing. The court reasoned that it must find in favor of disclosure where records reflect allegations of a substantial nature and there is reasonable cause to believe the complaint was "well-founded."⁹⁹ However, neither a finding that the allegations were true, nor evidence that discipline was imposed, is necessary to determine that a complaint is "well-founded" justifying disclosure.¹⁰⁰

However, the First District Court of Appeal took a broader view of the exception as to a newspaper's request for the individual salaries of all city employees.¹⁰¹ In *Teamsters, Local 856 v. Priceless*, the Court held that public employees have a reasonable expectation of privacy in their personnel files, and there was no evidence presented showing that the release of employee names and their compensation would advance the public interest in efficient governmental operations.¹⁰² The Court note that because both city policy manuals and union agreements stated that employee salary information is kept in confidential personnel files showed that employees

had an expectation of privacy as to this information.¹⁰³ Therefore, the employee's privacy interest outweighed the public's interest in the disclosure of individually identifiable salaries.¹⁰⁴

Section 6254(c) exempts from disclosure "Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." Pursuant to the wording of the statute, personnel records are not automatically exempt from disclosure under the Act. Rather, an employer must show that disclosure of the records would constitute "an unwarranted invasion of personal privacy." Courts have narrowly applied the language of Section 6254(c).

For instance, courts have determined that the following personnel records must be disclosed despite the language of Section 6254(c): (1) the names of every individual granted a criminal conviction exemption to work at a licensed day care facility;¹⁰⁵ (2) the address of record for state-employed physicians;¹⁰⁶ (3) the names of police officers who fired shots at a citizen;¹⁰⁷ and (4) letters which appointed and then rescinded the appointment of an individual to a city position.¹⁰⁸

In *Versaci v. Superior Court (Palomar Community College District)*, case, the court found that a reference to performance goals in an employment contract does not require disclosure of the performance goals as part of the employment contract under the Public Records Act. An employment contract for the Superintendent of the Community College District included a provision for an annual written evaluation by the Government Board. The president of the District's faculty union sought disclosure of the Superintendent's personal performance goals under the Public Records Act as they were referenced in the employment contract, a document that may be released under the Act. The court disagreed and found that, while the performance goals were referenced in the contract, they were not incorporated into the contract. The goals also constituted a "personal file or other 'similar' file" within the meaning of the Public Records Act and thus were expressly protected from disclosure.¹⁰⁹

In *International Federation of Professional and Technical Engineers, Local 21, APL-CIO v. Superior Court (Contra Costa Newspapers, Inc.)*, the court found that the names and salaries of high-ranking employees must be disclosed. The City of Oakland in this case had a past practice of routinely disclosing the name and salaries of high-ranking employees. Thus, the employees had no reasonable expectation of privacy in the information. Also, the court found that there was a vital public interest in being able to scrutinize how the government spends public funds that outweighs any privacy interest that the employees had in their name and salary information.¹¹⁰

A conflict continues to exist over whether disciplinary information on peace officers must be produced. In *California Commission on Peace Officer Standards and Training v. Superior Court (L.A. Times)*, the court of appeal reversed the trial court and found that the California Commission on Peace Officer Standards and Training ("POST"), a state agency that collects and maintains employment information on peace officers, did not need to release the employment history of peace officers pursuant to a Public Records Act request. The court of appeals found that information on the peace officers' employment history (name, date of birth, department names, appointment dates, appointment status, termination dates and reasons for termination) constituted privileged employment history and was not subject to disclosure under the Public

Records Act. However, the requesting entity was not required to follow Pitches discovery procedures for the information because those procedures are only triggered during a civil or criminal action.¹¹¹

Recently, the California Supreme Court partially reversed a court of appeals decision that had ordered disclosure of a sheriff deputy's name and disciplinary history in response to a Public Records Act (PRA) request. The case involved a sheriff deputy's disciplinary appeal before the San Diego Civil Service Commission (Commission). The sheriff deputy had elected a closed hearing for his appeal. The Commission's rules provided that if a peace officer requested a closed hearing, the hearing would be closed and the identity of the peace officer would not be revealed. The San Diego Union-Tribune learned of the closed hearing and requested access to the hearing through its publisher, Copley Press, Inc. This request was denied and Copley made a series of PRA requests to obtain information on the disciplinary appeal.

The Commission eventually produced a set of redacted documents that excluded the deputy's name. Copley filed a writ to compel full disclosure, which was denied by the superior court. Copley then filed another writ that appealed that decision. The Court of Appeal granted the petition and ordered disclosure of the name and disciplinary history, reasoning that the records did not qualify as a peace officer personnel record under Penal Code sections 832.7 and 832.8 and thus were not exempt from disclosure. A key basis of the Court of Appeal's determination was its assessment that the Commission was not the deputy's employer. The California Supreme Court partially reversed.

The California Supreme Court determined that the Commission, in hearing the disciplinary appeal, functioned as part of the employing agency of the deputy. Thus, the files that it maintained as part of the disciplinary appeal constituted files of the employing agency within the meaning of Penal Code sections 832.7 and 832.8. Because Government Code section 6254, subdivision (k) exempts from PRA disclosure any records which are exempt from disclosure under federal or state law, and the records are exempt from disclosure under Penal Code sections 832.7 and 832.8, the records were exempt from disclosure in response to a PRA request. Important in the California Supreme Court's analysis was its assessment that the exemption under Penal Code section 837.7 was not limited to civil or criminal proceedings and applied to a PRA request. It is important to note that this case turned entirely on the existence of Penal Code exemptions protecting peace officer records from disclosure under the PRA. Had records been sought of employees that did not qualify for this or another protection, the result might have been different.¹¹²

The result in Copley contrasts with the result reached by the court in the recent case of *BRV, Inc. v. Superior Court [Dunsmuir Joint Unified High School District]*.¹¹³ In that case, the court found that the documents did not qualify for an exemption and required their disclosure. In *BRV*, the board of education of the Dunsmuir Joint Unified High School District hired an investigator to look into and prepare a report regarding allegations of misconduct by the district's superintendent. Although the board received the full report in confidence, portions of the report were released to the newspaper by persons interviewed by the investigator. After receiving the report, the board entered into an agreement with the superintendent in which it accepted the

superintendent's resignation in exchange for certain payments and a promise to keep the report confidential.

The newspaper and the public suspected a "sweetheart deal" and demanded access to the report. The newspaper filed a Public Records Act (PRA) request to obtain a copy of the report. The board refused to produce the report and claimed it was exempt from disclosure under the PRA. The Court of Appeals ultimately granted a writ requiring release of the full report. Although the trial court determined that only the portion of the report dealing with complaints of the superintendent yelling at students needed to be disclosed, and that the rest of the report did not need to be disclosed because it involved complaints determined to be not credible or not of a serious nature, the court of appeal disagreed.

In reaching its decision, the court relied upon the constitutional amendments enacted by Proposition 59, which require the Act to be read broadly to require disclosure of all public records unless expressly stated otherwise. The court found that information in the report, even though it contained references to the disciplinary history of students, did not qualify as a pupil record exempt from disclosure under the Act. The report was not directly related to the educational interests of the student but had been prepared for the purpose of investigating alleged misconduct of the superintendent.

The court also determined that the report did not qualify for the catchall exemption under Government Code section 6255. Section 6255 exempts a public record from disclosure where the privacy interest is greater than the public's interest in disclosure. Here, the court determined that, while the superintendent had a substantial privacy interest in the report, the public also had a significant interest both in the professional competency and conduct of the superintendent and in knowing how the district responded to allegations of misconduct by a high ranking official. Balancing these two interests, the court determined that the public's interest in disclosure outweighed the superintendent's right to privacy. Of important to the court was the public position of authority held by the superintendent as the highest ranking official in the district and the public nature of the allegations against him. However, the court did permit the names of the persons interviewed, including students, parents, staff members, and faculty members, to be redacted from the report.

Letters of discipline for misconduct fall within the personnel records exception to the California Public Records Act, and must be treated as confidential in the absence of a written waiver from the employee that permits its release. This is because a terminated employee has a constitutionally based liberty interest in clearing his or her name that would be infringed upon should the public entity release disciplinary information about the employee without the employee's consent or a chance for the employee to clear his or her name.¹¹⁴

3. PENDING LITIGATION

Section 6254(b) exempts from disclosure records "pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to [the Tort Claims Act, California

Government Code Section 810, *et seq.*], until the pending litigation or claim has been finally adjudicated or otherwise settled.

Documents are protected from disclosure under Section 6254(b) only if the document was specifically prepared for use in litigation.¹¹⁵ This exception applies to the work product of both the public entity and its attorney.¹¹⁶ In addition, a recent California case, *Board of Trustees of the California State University v. Superior Court of San Diego County (The Copley Press, Inc.)* 2005 DJDAR 11369 (September 15, 2005), extended the pending litigation exception to all litigation-related documents (e.g., correspondence, communications, etc. prepared by, or sent to, opposing counsel), when the parties intend that the information will not be shared outside of the litigation¹¹⁷ However, once litigation has concluded, disclosure is required unless another specific exemption under the Act applies.¹¹⁸

Records that are generated in the ordinary course of business which may be relevant to future litigation to which an agency may be a party are not exempt from disclosure under Section 6254(b). Rather, as set forth above, in order to be exempt, the records must be specifically prepared for litigation.

4. NO POSTING OF HOME ADDRESS OR TELEPHONE NUMBER OF ELECTED OR APPOINTED OFFICIAL (OR SPOUSE OR CHILD OF OFFICIAL) ON THE INTERNET

Section 6254.21 provides that no public employer shall post the home address or telephone number of any elected or appointed official (or of the official's residing spouse or child) on the Internet without first obtaining the written permission of that individual.

5. HOME ADDRESS AND PHONE NUMBERS OF SCHOOL DISTRICT EMPLOYEES

Section 6254.3 provides that the home addresses and home telephone numbers of employees of a school district or county office of education are not public records and are not open to public inspection, except:

- to an agent, or a family member of the individual to whom the information pertains;
- to an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties;
- to an employee organization pursuant to regulations and decisions of the Public Employment Relations Board ("PERB"), except that the home addresses and home telephone numbers of employees performing law enforcement-related functions need not be disclosed, however upon written request of any employee, a school district or county office of education shall not disclose the employee's home address or home telephone number under this paragraph; or

- to an agent or employee of a health benefit plan providing health services or administering claims for health services to school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

6. COMMUNICATIONS RECEIVED FROM LEGAL COUNSEL

Pursuant to Section 6254.25, the disclosure of a memorandum submitted to a legislative body of a local agency by its legal counsel is exempt from disclosure until the pending litigation has been finally adjudicated or otherwise settled.

7. “CATCH-ALL” EXCEPTION

Section 6255 provides that an agency can withhold any record by demonstrating that the record is exempt under an express provision of the Act, or 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.” Section 6255 is generally referred to as the “catch-all” provision of the Act. In applying Section 6255, courts apply a “balancing test” on a case-by-case basis between the public interest in disclosure and the public interest in nondisclosure.¹¹⁹ The burden of proof will be on the employer resisting disclosure to demonstrate a clear overbalance on the side of not disclosing the records.¹²⁰ Courts have determined that Section 6255 may be used to exclude records which reflect the “deliberative process” or decision-making process of public officers. Courts have determined that the following types of records are exempt under Section 6255: (1) applications of candidates for employment,¹²¹ (2) staff evaluations and recommendations discussing applicant’s fitness for appointment,¹²² and (3) telephone records of council members.¹²³

B. WAIVER OF EXEMPTION

Pursuant to Section 6254.5, whenever a public employer discloses a public record which is otherwise exempt from disclosure pursuant to the Act, the disclosure constitutes a waiver of the exemption unless the disclosure was made:

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

C. RECORDS DO NOT LOSE THEIR CONFIDENTIALITY WITH THE PASSAGE OF TIME

Records do not lose their confidential or restricted classification by mere passage of time in the absence of statutory change or designation of termination date. Absent subsequent amendment or statutory change, any statute which declares public records to be confidential must be deemed a perpetual restriction, unless the law provides for termination of the confidential classification at a specified time or upon the happening of a particular event.¹²⁴

SECTION 6 LEGAL ACTION TO COMPEL DISCLOSURE OF PUBLIC RECORDS

Any person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records may institute a proceeding for injunctive or declarative relief in a court of competent jurisdiction. (Section 6258.)

Whenever it appears to a court, based upon the verified petition to the superior court of the county where the records are situated, that certain public records are being improperly withheld from a member of the public, the court is required to order the officer or person charged with withholding the records to disclose the public record or to show cause why he or she should not disclose the subject records.

Upon examining the records in camera, the court shall decide whether or not the records must be disclosed. The court may also look to the papers filed by the parties and such oral argument and additional evidence as the court may allow. If the refusal to disclose is not justified by Sections 6254 or 6255 of the Act, the court will order the records disclosed. But if the judge determines that the refusal to disclose was justified, then the judge must return the item to the public official without disclosing the documents content with an order supporting the refusal to disclose. (Section 6259(b).)

The decision of the court is immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ of review. Any person who fails to obey such a court order may be cited for contempt of court.

The court shall award costs and reasonable attorney fees to a prevailing plaintiff.¹²⁵ To recover on a claim for fees, the plaintiff must produce substantial evidence of a failure to produce available documents.¹²⁶ The plaintiff must point to specific documents that were requested and known about by the producing party, and not produced.¹²⁷ The costs and fees are to be paid by the public agency; the particular official who denied access does not become personally liable. If the court finds the plaintiff's case to be clearly frivolous, it will award court costs and reasonable attorney fees to the public agency. (Section 6259(d).)

SECTION 7 COMPUTER SOFTWARE

Computer software developed by a state or local agency is not itself a public record. (Section 6254.9.) The agency is entitled to sell, lease, or license the software for commercial or noncommercial use. Public records stored in a computer are subject to disclosure under the Act.

SECTION 8 DISTRICT ATTORNEY AS THE REQUESTING PARTY

A. ARE RECORDS OF COMPLAINTS OR INVESTIGATIONS EVER EXEMPT FROM DISCLOSURE?

The exemption of records of complaints to, or investigations conducted by, any state or local agency for licensing purposes under Section 6254(f), shall not apply when a request for inspection of such records is made by a district attorney. (Section 6262.)

B. IS THE DISTRICT ATTORNEY ENTITLED TO INSPECT OR COPY NONEXEMPT RECORDS?

A state or local agency is required to allow the inspection or copying of any public record or class of public records not exempt under the Act, when requested by a district attorney. (Section 6263.)

C. CAN THE DISTRICT ATTORNEY OBTAIN AN ORDER ALLOWING INSPECTION OR COPYING OF THE RECORDS?

When an agency fails or refuses to allow inspection or copying within 10 working days of a request, the district attorney may petition a court of competent jurisdiction to have the state or local agency allow inspection or to receive a copy of any public record or class of public records not exempted from disclosure by the Act. The court may require a public agency to permit inspection or copying of the public records by the district attorney, unless the public interest or good cause shown in withholding such records clearly outweighs the public interest in disclosure. (Section 6264.)

D. DOES THE STATUS OF THE AGENCY'S RECORDS CHANGE BECAUSE OF THE DISCLOSURE TO THE DISTRICT ATTORNEY?

The status of records, under any other provisions of law, shall not be affected by the disclosure of records to a district attorney. (Section 6265.)

SECTION 9 **LIBRARY RECORDS**

All registration and circulation records of any library which is supported by public funds are to remain confidential. These records are not to be disclosed to any person, local agency or state agency. (Section 6267.)

These records are, however, subject to disclosure in the following instances:

- By a person acting within the scope of his or her duties within the administration of the library.
- By a person authorized, in writing, by the individual to whom the records pertain, to inspect the records.
- By order of the appropriate superior court.

APPENDIX A

BROWN ACT CHECKLIST FOR LOCAL AGENCIES

Is it a legislative body subject to the Act?

(Yes, if ANY of the following)

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

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

Is it a meeting subject to the Act?

(Yes, if ALL of the following are present)

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

Note: *Gatherings open to the general public involving matters of general interest are not governed by the Act so long as a majority of the local body do not discuss among themselves, other than as part of a scheduled program, specific business within the Board's jurisdiction.*

Also excluded is attendance at any of the following as long as a majority of the members do not discuss among themselves, other than as part of a scheduled program, specific business within the local agency's jurisdiction.

- Meetings organized by other than the local body;
- Meetings noticed by another body;
- Purely social or ceremonial functions; and
- Meetings of a standing committee of the Board as long as those not on the committee attend only as observers.

Was the meeting properly agendized?

(Yes, if all have been done.) (See Appendix B).

- Does the agenda reflect that all meetings commence in public session?
- Does the agenda include public comment before the legislative body considers any item?
- Was it posted 72 hours before a regular meeting? (Note weekends count as part of the 72 hours.)
- Is the agenda posted in a place accessible to the public regardless of time of day?
- If it is a special meeting, was it posted 24 hours before the meeting?
- Did the need to act arise after the agenda was posted?

If so, do 2/3rds of the members present, or if less than 2/3rds are present, a unanimous vote of those present, determine that the need to take immediate action came to the attention of the district after the agenda was posted.

Is the legislative body properly meeting in closed session?

(Yes, for each of the following.) (See Appendix B)

- Does it involve a discussion with the district's real property negotiators?

If so, prior to holding such a closed session, the local agency must identify its negotiators, the address of the real property or properties which are under negotiation, the parties to the negotiation, and whether the instruction to its negotiators will concern price, terms of payment or both.

- Does it involve a discussion with the Agency's legal counsel over anticipated or actual litigation?

If so, the claim or case must be identified unless disclosure would jeopardize service of process or existing settlement negotiations. If the litigation is anticipated, the agenda must specify the number of potential cases. Additional information may also need to be provided based on the specific circumstances.

- Does it involve a discussion of a threat to Agency services or facilities?

Section 54957 subdivision (a) permits closed session discussion with a security consultant or security operations manager in addition to the list of authorized personnel. It also permits discussion of a threat to essential public services, including water, drinking water, wastewater treatment, natural gas service and electrical service as expressly authorized in closed session.

- Does it involve the appointment, employment, or evaluation of a public employee?

If so, does the agenda reflect: Public Employee Appointment/Employment: Title of position to be appointed/employed? -and/or- Public Employee Evaluation: Title of position of employee under review?

- Does it involve the discipline, dismissal or release of a public employee?

If so, does the agenda reflect: Public Employee Discipline/Release/Dismissal? No additional information is required or appropriate.

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

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

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

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

The following types of closed session discussions are permitted:

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

Note: *School districts and community college districts are exempt from the Brown Act regarding discussion of labor relations with its represented employees under the Educational Employment Relations Act.*

- Does it involve complaints or charges against a public employee?

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

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

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

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

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

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

- Does it involve early withdrawal of funds in a deferred compensation plan?

Section 54957.10 provides that a legislative body may hold a closed session to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

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

Has the Board properly reported out any action taken in closed session?

- Was it by roll call vote at the public meeting following the closed session?
- Did the Board give final approval of an agreement concluding real estate negotiations?
- Did the Board give its legal counsel authority to defend, or seek or refrain from seeking appellate review or relief, or enter as amicus curiae, unless such reporting out would jeopardize the district's ability to serve the action on unserved parties or jeopardize settlement discussions?
- Did the Board give final approval of settlement of pending litigation?
- Did the Board take action to appoint, employ, dismiss, accept the resignation or otherwise affect the status of an employee, unless in the case of dismissal, the employee has the right to an administrative remedy.

While certain actions must be reported out of closed session at the public meeting following the closed session under Section 54957.1, only those specific actions need be reported out. If no action is taken, a public report that no action was taken suffices.

If the Board initiated dismissal proceedings against an employee with an administrative remedy, e.g. a teacher has a right to a hearing before a commission on professional competence, then no action is reported out until after the employee either waves the hearing or is dismissed after such hearing.

Has the confidentiality of closed session matters been maintained?

Section 54963 codified existing case law and Attorney General Opinions. It provides that closed session information may not be disclosed unless the legislative body authorizes disclosure of the confidential information. Remedies against an individual for violating the confidentiality of closed session include injunctive relief, disciplinary action against an employee, and referral of a member of a legislative body to the grand jury for criminal prosecution.

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

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

APPENDIX B

SAMPLE AGENDA

AGENDA
CITY OF SPRINGFIELD
REGULAR MEETING

Date: December 11, 200_
Time: 6:30 p.m.
Location: City Hall

I. Call to Order - Flag Salute

II. Roll Call

III. Approval of Minutes of Meeting of November 20, 200_

IV. Public Comment

V. Agenda Items -Closed Session

A. Public Employee (Gov. Code § 54957)

1. Appointment
Bus Drivers (5), Payroll Analyst (2), Deputy City Attorney (1)
2. Discipline/dismissal/release

B. Conference with Labor Negotiator (Gov. Code § 54957.6): (Optional for negotiations with those units represented by exclusive bargaining representatives under the EERA.)

City Negotiator: Liebert Cassidy Whitmore
Unrepresented Employees: Managers and Supervisors

C. Conference with Legal Counsel -Existing Litigation (Gov. Code § 54956.9(a).)

1. *Jones v. City*, Sup. Ct. Case No. 131324
2. Anticipated Litigation (Gov. Code § 54956.9(b)(1)(3)(A))
3. Once Case Initiation of Litigation (Gov. Code § 54956.9(c).)

VI. Agenda Items - Open Session

A. Reporting out of closed session

B. Consent Agenda

All matters listed under the Consent Agenda are considered to be routine and will be acted upon by a single roll call vote of the Council. There will be no separate discussion of these matters unless a member of the Council requests that it be removed from the Consent agenda and be considered as a separate item.

C. Regular Agenda

1. Unfinished Business
 - a. Recommendation of the Finance Committee
2. New Business
 - a. Resolution to layoff 15 FTE Employees
 - b. Reorganization of Parks & Recreation Library
 - c. Report on construction of new middle school

VII. Adjournment

Disability Access

City Hall is located at 123 Main St., City, CA. It is wheelchair accessible. All meetings are real-time captioned and are cablecast open-captioned on City Cable 30. The following services are available when requests are made by 4:00 p.m. of the Friday before the Council meeting: American Sign Language interpreters or use of a reader during a meeting; large print agenda or minutes in alternative format; assistive listening devices. Please contact, Marge Simpson, Secretary to the Council, (310) 981-2000, if you need assistance in order to participate in a public meeting or if you need the agenda and public documents modified as required by Section 202 of the Americans with Disabilities Act.

APPENDIX C

SECTION 54957 CHECKLIST FOR LOCAL AGENCIES

Was the meeting properly agendized?

(Yes, if all have been done.)

- Does the agenda reflect that all meetings commence in public session?
- Does the agenda include public comment before the legislative body considers any item, including the closed session matters?
- Was it posted 72 hours before a regular meeting? (Note weekends count as part of the 72 hours.)
- Is the agenda posted in a place accessible to the public regardless of time of day?
- If it is a special meeting, was it posted 24 hours before the meeting?
- Did the need to act arise after the agenda was posted?

If so, do 2/3rds of the members present, or if less than 2/3rds are present, a unanimous vote of those present determine that the need to take immediate action came to the attention of the district after the agenda was posted.

Is the legislative body properly meeting in closed session under Section 54957?

(Yes, for each of the following.)

- Does it involve the appointment, employment, or evaluation of a public employee?

If so, does the agenda reflect: Public Employee Appointment/Employment: Title of position to be appointed/employed? And, or, Public Employee Evaluation: Title of position of employee under review?

- Does it involve the discipline, dismissal or release of a public employee?

If so, does the agenda reflect: Public Employee Discipline/Release/Dismissal? No additional information is required or appropriate.

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

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

- Does it involve complaints or charges against a public employee?

If so, did the employee receive 24 hour notice personally or by mail of the right to have the charges or complaints heard in open session?

Before holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee must be given at least 24 prior written notice of his or her right to have the complaints or charges heard in open session rather than closed session, which notice must be delivered personally or by mail. Failure to provide such notice voids any disciplinary or other action taken by the legislative body against the employee. Complaints or charges against elected officials must take place in public session.

- Does it involve any fact-finding by the local agency regarding accusations of misconduct by the employee?

If so, did the employee receive 24 hour notice personally or by mail of the right to have the charges or complaints heard in open session?

- Does it involve the reweighing of evidence after hearing by a hearing officer or outside agency?

If so, did the employee receive 24 hour notice personally or by mail of the right to have the charges or complaints heard in open session?

- Does it involve a hearing against the employee?

If so, did the employee receive 24 hour notice personally or by mail of the right to have the charges or complaints heard in open session?

- Has the employee received prior notice of the recommended action?

If not, and the recommended action is based on charges or complaints, 24 hour notice must be provided.

If so, and the recommended change in status is not based on complaints or charges, no 24 hour notice is required.

- Does it solely involve deliberations regarding whether the complaints and charges justify disciplinary action rather than fact-finding?

If so, no 24 hour notice is required.

- Does it involve an evaluation of the employee's performance?

If so, no 24 hour notice is required.

- Does it involve a determination of whether the employee should be granted tenure?

If so, no 24 hour notice is required.

Note: *Whether a legislative body is properly meeting in closed session is one of the more common challenges under the Brown Act. The consequences of improper closed session meetings and action range from nullifying the action to criminal misdemeanor for knowing*

violation of the Act. Accordingly, legislative bodies should ensure that their agendas are in compliance and that the topics under discussion are authorized.

Has the Board properly reported out any action taken in closed session?

- Was the closed session action reported by roll call vote at the same public meeting following the closed session?
- Did the Board take action to appoint, employ, dismiss, accept the resignation or otherwise affect the status of an employee, unless in the case of dismissal, the employee has the right to an administrative remedy.

While certain actions must be reported out of closed session at a public meeting during which the closed session under Section 54957.1 occurs, only those specific actions need be reported out. If no action is taken, a public report that no action was taken suffices.

If the Board initiated dismissal proceedings against an employee with an administrative remedy, e.g. a teacher has a right to a hearing before a commission on professional competence, no action is reported out until after the employee either waives or exhaust the administrative remedies available to him or her.

- Has the confidentiality of closed session matters been maintained?

Section 54963 provides that closed session information may not be disclosed unless the legislative body authorizes disclosure of the confidential information. Remedies against an individual for violating the confidentiality of closed session include injunctive relief, disciplinary action against an employee, and referral of a member of a legislative body to the grand jury for criminal prosecution.

Does the public have access to the documents distributed at the public meeting, including sanitized charges if the employee requested a public hearing?

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

APPENDIX D

BROWN ACT CASES REGARDING SECTION 54957

1. **Trancas Property Owners Association v. City of Malibu** (2005) 138 Cal.App.4th 172 (Settlement agreement that contains provisions ordinarily subject to the Brown Act's requirement of an open meeting (e.g., rescission of land use decision or granting of a zoning variance) cannot be adopted in closed session under the litigation exemption.)
2. **Moreno v. City of King** (2005) 127 Cal.App.4th 17, 25 Cal.Rptr.3d 29 (Notice required before City Council could review memo from City Manager detailing problems with at-will Finance Director; memo constituted "accusations of misconduct.")
3. **Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs.** (2003) 107 Cal.App.4th 860, 132 Cal.Rptr.2d 453 (Notice required prior to the governing board reviewing and reweighing the findings and conclusions of an arbitrator in a disciplinary hearing in order to make its own determination regarding whether to impose discipline.)
4. **Duval v. Board of Trustees** (2001) 93 Cal.App.4th 902, 113 Cal.Rptr.2d 517 (Board can meet in closed session to discuss evaluation instrument to be used in evaluating CEO under the authority to discuss evaluation of a public employee.)
5. **Bell v. Vista Unified School Dist.** (2000) 82 Cal.App.4th 672, 98 Cal.Rptr.2d 263 (Notice required before school board could determine to remove coaching assignment and stipend based on CIF report of recruiting irregularities, even though employee not dismissed.)
6. **Bollinger v. San Diego Civil Service Com.** (1999) 71 Cal.App.4th 568, 84 Cal.Rptr.2d 27 (No notice required when civil service commission met to review recommended findings and conclusions of an arbitrator, where sole action was to deliberate regarding the demotion recommended by the arbitrator's decision.)
7. **Fischer v. Los Angeles Unified School Dist.** (1999) 70 Cal.App.4th 87, 82 Cal.Rptr.2d 452 (No notice required when school board met to consider recommendation not to reelect probationary teachers, when recommendation based on notices of unsatisfactory service the teachers had previously had an opportunity to review and discuss.)
8. **Furtado v. Sierra Community College** (1998) 68 Cal.App.4th 876, 80 Cal.Rptr.2d 589 (No notice required when board met to review non-tenured librarian's evaluation, even though it then determined not to renew her contract.)
9. **Titus v. Civil Service Com.** (1982) 130 Cal.App.3d 357, 181 Cal.Rptr. 699 (No right to be present in closed session when civil service commission deliberates regarding whether to impose discipline.)
10. **Lindros v. Governing Bd. of Torrance Unified School Dist.** (1972) 26 Cal.App.3d 38, 103 Cal.Rptr. 188 (No right to be present in closed session while school board was deliberating whether to adopt hearing officer's decision upholding dismissal.)

11. **Lucas v. Board of Trustees (1971) 18 Cal.App.3d 988, 96 Cal.Rptr. 431** (*Statute permitting school board to consider personnel matters in executive session rather than at a public meeting included authority to vote and act to terminate superintendent's employment in executive session.*)

ENDNOTES

- 1 Government Code § 54950. All further section references are to the Government Code unless otherwise provided.
- 2 Government Code §§ 54950 *et seq.*
- 3 Section 54950.
- 4 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 117 Cal.Rptr.2d 631.
- 5 Section 54950.
- 6 *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876, 80 Cal.Rptr.2d 589.
- 7 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d. 545
- 8 Ops.Cal. Leg.Counsel 1959, S.J. 1229.
- 9 32 Ops. Cal. Atty. Gen. 240 (1958).
- 10 71 Ops. Cal. Atty. Gen. 1 (1990).
- 11 However the Bagley-Keene Open Meeting Act, Cal. Gov't Code §§ 11120 *et seq.* would likely apply to such agencies.
- 12 *Torres v. Board of Commissioners, supra*, Note 7.
- 13 39 Ops.Cal. Atty.Gen. 94 (1962).
- 14 Ops. Cal.Leg.Counsel 1959, S.J. 1229.
- 15 59 Ops. Cal.Atty.Gen. 162 (1976).
- 16 79.Ops. Cal Atty.Gen. 69 (1996).
- 17 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 178 Cal. Rptr. 299.
- 18 81 Ops.Cal.Atty.Gen. 156 (1998).
- 19 *International Longshoreman's and Warehouseman's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287-295, 81 Cal.Rptr.2d 456.
- 20 *International Longshoreman's and Warehouseman's Union v. Los Angeles Export Terminal, Inc., supra*, 69 Cal.App.4th at 295, Note 19.
- 21 Section 54952 (c) (2).
- 22 *Int'l Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc., supra*, Note 19.
- 23 *Henderson v. Los Angeles County Board of Education* (1978) 78 Cal.App.3d 875, 144 Cal.Rptr. 568.
- 24 *Joiner v. City of Sebastopol, supra*, 125 Cal.App.3d 799, Note 17.
- 25 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123.
- 26 Section 54953.
- 27 *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 175 Cal.Rptr. 292.
- 28 42 Ops.Cal.Atty.Gen. 61 (1963).
- 29 Section 54952.5(c)(2); *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41, 69 Cal.Rptr. 480 (superseded by statute on another point).
- 30 "Open Meeting Laws," California Attorney General (1989) p. 18.
- 31 81 Ops. Cal. Atty. Gen.15b (1998).

32 78 Ops.Cal.Atty.Gen. 327 (1995).
33 Section 54954.2(b).
34 Section 54954.3(a).
35 *Id.*
36 Section 54954.3(b).
37 Section 54954.3(c).
38 78 Ops.Cal.Atty.Gen. 224 (1995).
39 *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Board of Supervisors* (2005) 129 Cal
App.4th 250.
40 *Baca v. Moreno Valley Unified School District*, 936 F.Supp. 719 (E.D.Ca. 1996).
41 *White v. City of Norwalk*, 900 F.2d 1421 (9th Cir. 1990).
42 Section 54954.3(a).
43 *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231.
44 *Trancas Property Owners Association v. City of Malibu* (2005) 138 Cal.App.4th 172.
45 *Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87.
46 61 Ops.Cal. Atty. Gen. 10 (1978).
47 *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876.
48 *Versaci v. Superior Court (Palomar Community College District)* (2005) 127 Cal.App.4th 805.
49 *Attorney General Opinion No. 04-408*, 2005 WL 429690 (Cal. A.G.).
50 *Duval v. Board of Trustees of the Coalinga-Huron Joint Unified School District* (2001) 93 Cal.App.4th 902,
113 Cal.Rptr.2d 517.
51 *Bell v. Vista Unified School District* (2000) 82 Cal. App.4th 672, 98 Cal.Rptr.2d 263.
52 *Morrison v. Housing Authority of the City of Los Angeles Board of Commissioners* (2003) 107 Cal.App.4th 860,
132 Cal.Rptr.2d 453.
53 *Moreno v. City of King* (2005) 25 Cal.Rptr.3d 29.
54 *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87, *supra*, Note 45.
55 *Fischer v. Los Angeles Unified School District*, *supra*, Note 45; 78 Ops. Cal. Atty. Gen. 218 (1995).
56 *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568.
57 78 Ops.Cal.Atty.Gen. 218 (1995).
58 63 Ops. Cal. Atty. Gen. 153 (1980).
59 *Santa Clara Federation of Teachers v. Governing Board* (1981) 116 Cal.App. 3d 831.
60 *Trancas*, *supra*, at p. 185-186, Note 44.
61 *Trancas*, *supra.*, Note 44.
62 California Education Code § 48912.
63 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App. 3d 893, 205 Cal.Rptr. 92.
64 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 87 Cal. Rptr. 2d 813.
65 80 Ops. Cal. Atty. Gen. 231 (1997); Section 54963

66 *Harron v. Bonilla*, 2005 DJDAR 238 (January 7, 2005).
67 Section 54963
68 *Regents of the University of California v. The Superior Court of the City and County of San Francisco* (1999)
20 Cal. 4th 509.
69 Gov. Code §54972.
70 Gov. Code §54973.
71 Gov. Code §54974.
72 Gov. Code §54974.
73 Gov. Code §54974.
74 Gov. Code §54974.
75 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169, 128 Cal.Rptr.2d 234.
76 *Register Div. of Freedom Newspaper, Inc. v. County of Orange*, *supra*, Note 63.
77 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 88 Cal.Rptr.2d 552.
78 Section 6252(d).
79 *San Gabriel Tribune v. Superior Court of State of California* (1983) 143 Cal.App.3d 762, 192 Cal.Rptr. 415.
80 Section 6252 (f).
81 *Coronado Police Officers Ass'n v. Carroll* (2003) 106 Cal.App.4th 1001, 131 Cal.Rptr.2d 553.
82 *San Gabriel Tribune v. Superior Court of State of California*, *supra*, Note 79.
83 71 Ops. Atty. Gen. 235 (1988).
84 *Board of Trustees of the California State University v. Superior Court of San Diego County (The Copley Press,*
Inc.) (2005) 132 Cal.App.4th 889.
85 *Id.* at 11369.
86 *Id.* at 11372.
87 *Id.*
88 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332, 342, 201 Cal. Rptr. 654.
89 *Braun v. City of Taft*, *supra*, Note 88; *San Gabriel Tribune v. Superior Court of State of California*, *supra*, Note
79.
90 63 Ops.Cal.Atty. Gen. 215 (1980).
91 Section 6253.4.
92 Section 6253.
93 Section 6253.9.
94 *LAPD v. Superior Court of Los Angeles County* (1977) 65 Cal.App.3d 661, 135 Cal.Rptr. 575.
95 2 Ops. Cal.Atty. Gen. 240 (1958).
96 *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 98 Cal.Rptr.2d 564.
97 *Bakersfield City School Dist. v. Superior Court.* (2004) 118 Ca. App.4th 1041; 13 Cal.Rptr.3d 517.
98 *Bakersfield City School Dist.*, *supra*, 118 Cal.App.4th at p. 1044, Note 97.
99 *Id.* At p. 1046; *American Federation of State, County and Municipal Employees (AFSCME) v. Regents of the*
University of California (1978) 80 Cal.App.3d 913, 918; 146 Cal.Rptr.42

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- 100 *Bakersfield City School Dist.*, *supra*, 118 Cal.App.4th at p.1046, Note 97.
- 101 *Teamsters Local 856 v. Priceless* (2003) 112 Cal.App.4th 1500; 5 Cal. Rptr. 3d 847.
- 102 *Teamsters Local 856*, *supra*, 112 Cal.App.4th at p. 1522, Note 101.
- 103 *Id.*, Note 101.
- 104 *Id.* at p. 1522-23, Note 101.
- 105 *CBS Broadcasting Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 110 Cal.Rptr. 2d 889.
- 106 *Lorig v. Medical Board* (2000) 78 Cal.App.4th 462, 92 Cal.Rptr. 2d 862.
- 107 *New York Times Co. v. Superior Court* (1997) 52 Cal.App.4th 97, 60 Cal.Rptr. 2d 410.
- 108 *Braun v. City of Taft* (1984) 154 Cal.App.3d. 332, 201 Cal.Rptr. 654., *supra*, Note 88.
- 109 *Versaci v. Superior Court (Palomar Community College District)*, *supra*.
- 110 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court (Contra Costa Newspapers, Inc.)* (2005) 27 Cal.Rptr.3d 262 (review granted).
- 111 *Calif. Com'n on Peace Officer Standards & Training v. Superior Court (L.A. Times)*, (2005) 27 Cal.Rptr.3d 108 (review granted).
- 112 *Copley Press Inc. v. Superior Court* (2006) 39 Cal.4th 1272.
- 113 *BRV, Inc. v. Superior Court [Dunsmuir Joint Unified High School District]* 2006 WL 2789473 (Cal.App. 3 Dist. 2006).
- 114 *Cox v. Roskelley* (9th Cir. 2004) 359 F.3d 1105.
- 115 *County of Los Angeles v. Superior Court* (2000) 82 Cal.App.4th 819, 98 Cal.Rptr. 2d 564, *supra*, Note 96.
- 116 *Board of Trustees of the California State University*, *supra*, at p.898, Note 84.
- 117 *Id.* at 899-900.
- 118 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083, 49 Cal.Rptr. 2d 35.
- 119 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 88 Cal.Rptr.2d 552, *supra*, Note 77.
- 120 *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892, 110 Cal.Rptr.2d 889, *supra*, Note 105.
- 121 *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136, 59 Cal.Rptr.2d 537.
- 122 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159, 78 Cal.Rptr. 2d 847.
- 123 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 23 Cal.Rptr.2d 412.
- 124 15 Ops. Cal. Atty. Gen. 242 (1950).
- 125 *L.A. Times v. Alameda Corridor Transportation Authority*, 2001 88 Cal.App.4th 1381, 107 Cal. Rptr.2d 29.
- 126 *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School District*, 2006 DJDAR 6509 (May 26, 2006).
- 127 *San Lorenzo Valley Community Advocates for Responsible Education*, *supra*, Note 126.

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