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THE RALPH M. BROWN ACT

California's Open Meetings Law

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I. Overview of the Brown Act

A. Introduction/Scope

This paper is intended to provide public law attorneys with an understanding of the principles underlying and a practical approach to addressing the most common issues arising under California's Open Meetings law--the Ralph M. Brown Act. This paper's scope is limited to the Brown Act's application to League of California Cities members such as cities and their associated "legislative bodies". While it should be noted that the Brown Act also applies to counties, hospital lessees, school boards, and their associated "legislative bodies", for purposes of this paper, such application will not be discussed in depth. Also, not within this paper's scope are the "sunshine" or "open government" ordinances extending the public's access to meetings beyond the provisions of the Brown Act that have been adopted by cities and counties including Benicia, Berkeley, Contra Costa County, Milpitas, Oakland, Riverside, San Francisco, and Vallejo.

B. Background

In 1952 San Francisco *Chronicle* reporter, Michael Harris, wrote a 10-part series detailing the informal, undisclosed meetings, secret workshops and study sessions often held by local elected officials which skirted then existing law requiring advance public notice of meetings. This expose on local agencies' backroom deals made out of the public's eye led to a firestorm of media attention, summed up in an October, 1952 *Sacramento Bee* editorial that opined:

"A law to prohibit secret meetings of official bodies, save under the most exceptional circumstances, should not be necessary. Public officers above all other persons should be imbued with the truth that their business is the public's business and they should be the last to tolerate any attempt to keep the people from being fully informed as to what is going on in official agencies. Unfortunately, however, that is not always the case. Instances are many in which officials have contrived, deliberately and shamefully, to operate in a vacuum of secrecy."

The California State Legislature agreed with this editorial finding that a law prohibiting secret meetings was necessary, and in 1953 adopted California's first open-meeting law--officially known as the "Ralph M. Brown Act"¹. Although assemblyman Ralph Milton Brown of Turlock, went on to become speaker of the Assembly from January 1959 through September, 1961, history, as well, as every municipal law attorney and local elected official in the state will remember him as the man who introduced and authored the Brown Act. Rarely noted is the fact that then legal counsel for the League of California Cities Richard "Bud" Carpenter co-authored the Brown Act.

C. Brown Act Interpretation

The original 686 word Brown Act has substantially expanded in the ensuing half century. During that time courts, the attorney general, and local agency counsel frequently struggled to interpret the Brown Act and its numerous legislative amendments. Today many of the previous

¹ Cal. Gov't. Code Sections 54950 et seq. All statutory references throughout this paper are to the California Government Code unless otherwise noted.

interpretation questions have been answered by the courts and legislature and will be addressed in this paper, but many more interpretation questions remain unanswered.

When approaching one of those unanswered Brown Act questions it important to look to those sections of the Brown Act that are often referred to as the “heart” and “soul” of the Brown Act. The heart of the Brown Act is contained in these few words:

“All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.” Sec. 54953(a).

While the soul of the Act is expressed in the Legislative Intent which provides:

“In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.” Sec. 54950.

Based upon courts’ reviews of this heart and soul language, statutory exceptions authorizing closed sessions of legislative bodies are construed narrowly and the Brown Act is construed liberally in favor of openness in conducting public business. *Shapiro v. Board of Directors of Centre City Development Corp.* (2005) 134 Cal. App. 4th 170. Additionally, to aid in interpreting the Act, courts give great weight to the Attorney General’s interpretations of the Act. *Id.*

D. Proposition 59

Adding further to the Brown Act interpretation mix is Proposition 59--approved by 83% of the electorate in November, 2004--enacted as an amendment to the state constitution. Cal. Const., art. I, sec. 3. Proposition 59 does not explicitly create new access rights to meetings of public bodies and the writings of public officials, but it does constitutionalize those rights—potentially creating new tort liability for Brown Act violations.

Proposition 59 articulates rules of construction that any statute, court rule and other authority existing on Proposition 59’s effective date shall be “broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access”. Cal. Const., art. I, sec. 3 (b)(2). Statutes, court rules and other authorities adopted after the effective date that limit the right of access “shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.” *Id.*

However, fully more than half of Proposition 59’s language expressly provides that Proposition 59 neither supersedes nor modifies: 1) any statute, court rule, or other authority that protects the right to privacy including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer, Cal. Const., art. I, sec. 3 (b)(3); or 2) any provision of California’s constitution, including the

guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, Cal. Const., art. I, sec. 3 (b)(4). Proposition 59 further states it does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies in effect on the effective date including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records. Cal. Const., art. I, sec. 3 (b)(5). As of March, 2007, there have been no significant judicial interpretations of Proposition 59 at the appellate level. The legislature did amend Sections 54954.2 and 54957.1 of the Brown Act which they found necessary to implement and were reasonably within the scope of Proposition 59.

II. Brown Act Bodies

A. What Bodies are Subject to the Brown Act?

1. Governing Bodies of Local Agencies. The Brown Act applies to the “legislative body” of every local agency created by state or federal statute, notwithstanding a conflicting state law, Sec. 54958 and requires a quorum of the legislative body to conduct its business in open meetings. *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123. Legislative body members include newly elected or appointed members--prior to being sworn into office. Sec. 54952(b). Typical Brown Act legislative bodies include City Councils, Redevelopment Agencies, City, County and Public Agency Boards and Commissions, and Joint Powers Agencies.

2. Subsidiary Bodies of Local Agencies. The Brown Act also applies to commissions, standing committees, boards or other bodies of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution or formal action of a legislative body. Sec. 54952(b).

Standing Committees. Standing committees of a legislative body, regardless of their composition are subject to the Brown Act, if they have (1) continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of a legislative body. Sec. 54952(b). This is in contrast to *ad hoc* or advisory committees discussed below that are not subject to the Brown Act. Sec. 54952(b). If additional members of the local agency’s governing body desire to attend a standing committee and such attendance would constitute a quorum of the governing body, the additional members may attend but only as “observers”. Sec. 54952.2(c)(6). Being an observer means that the additional members may not ask questions, make statements, or sit at the table with the committee members. 81 Ops.Cal.Atty.Gen. 156 (1998). A committee created by an individual--such as the superintendent of schools--rather than a local agency also is subject to the Brown Act if the local agency delegated to the superintendent the authority to create the committee. *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781.

3. Private or Non-Profit Corporations.

Corporations receiving local agency funds. A board, commission, committee or other multimember body that governs a private corporation or limited liability company is subject to the Brown Act if: (1) it receives funds from a local agency; and (2) its governing board includes a member of the local agency's governing body appointed by that body. Sec. 54952(c)(1)(B). Examples include housing corporations, arts councils, business improvement district managers and chambers of commerce. A Brown Act body includes the governing board of a private, nonprofit corporation formed to provide programming for an educational access cable television channel by a

cable operator pursuant to its franchise agreement with a city and subsequently designated by the city to provide the programming services. 85 Ops.Cal.Atty.Gen. 55 (2002).

Corporations with local agency delegated authority. Multimember bodies, such as boards, that govern a private entity, such as corporations and limited liability companies, are subject to the Brown Act if: 1) created by an elected legislative body; and 2) exercising authority delegated by the elected body. Sec. 54952(c)(1)(A). This subjects to the Brown Act the board of directors of a private corporation when formed by the city to design, construct and operate an export facility on land leased from the city. *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287. Similarly, a private non-profit corporation formed to administer use of funds raised through the city's tax assessments on local businesses is a legislative body when it was formed to take over administrative functions normally handled by the city and the city played a role in the corporation's creation. *Epstein v. Hollywood Entertainment District II Business Improvement District* (2001) 87 Cal.App.4th 862.

3. Hospital Lessees. The lessee of any hospital that was first leased after January 1, 1994 pursuant to Health and Safety Code Section 32121, which exercises any material authority of a legislative body of a local agency is also a legislative body under the Brown Act. Sec. 54952(b)(4).

B. What Bodies are Not Subject to the Brown Act?

1. Advisory or Ad Hoc Committees. Advisory bodies composed solely of members of the legislative body and less than a quorum of the members of the legislative body are not subject to the Brown Act. Sec. 54952(b). For example, the actions of two council members, who constituted a quorum of the city's "Land Use and Planning" ("LUP") standing committee, but did not constitute a quorum of the city council, were regarded as "advisory only" and not subject to the Brown Act when they met with the Coastal Commission to discuss a matter over which the LUP standing committee had no jurisdiction. *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal. App. 4th 1123.

2. Other Bodies. The governing board of a jointly administered trust fund, whose members were appointed equally by a city and a labor union representing city employees and whose purpose was to address labor-management issues relating to the health, safety, and training of city employees, was not required to hold its meetings open to the public. 85 Ops.Cal.Atty.Gen. 55 (2004). The open meeting requirements of the Brown Act also did not apply to that portion of a retirement board meeting held pursuant to the County Employees Retirement Law of 1937 (Gov. Code, Sec. 31450 et seq.), that involves the discussion of medical records which are submitted in connection with an application for disability retirement. 65 Ops.Cal.Atty.Gen. 412 (1982).

3. State Boards, Commissions and Bodies. The Bagley-Keene Open Meeting Act governs meetings of state boards, commissions, committee and other bodies, but not the state legislature. Sec. 11120 et seq. The Brown Act is inapplicable to any of these state bodies.

C. What is a Local Agency?

Clearly a city, county and redevelopment agency created under California law are "local agencies." The occasional issue arises whether an agency is local. Factors which determine whether an agency is "local" include: the agency's scope and character, its geographic area of operation, and the extent of its power or jurisdiction. *Torres v. Board of Commissioners* (1979) 89

Cal. App. 3d 545. A housing authority created pursuant to Health & Safety Code Section 34200 et seq., is a “local agency” within the meaning of the Brown Act. *Id.*

An interagency police department task force was deemed a “local agency” subject to the Brown Act where the agency was formed as a separate legal entity under the Joint Exercise Powers Act, pursuant to written agreements by the participating city councils, and where the agency had a budget of more than \$9 million and had the authority to enter into contracts. *McKee v. Los Angeles Interagency Metropolitan Police Apprehensive Crime Task Force* (2005) 134 Cal. App. 4th 354. Effective January 1, 2007, a local agency also includes a multijurisdictional law enforcement agency (joint powers entity), that provides law enforcement services for the parties to a joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms; trafficking or felony possession of a firearm; high technology, computer or identity theft; human trafficking, or vehicle theft. Sec. 54957.8.

III. Brown Act Meetings

A. What constitutes a “meeting” under the Brown Act?

1. Broad Definition of Meeting. The Brown Act broadly defines “meetings” to include: (1) a face to face congregation of a majority of the members of a legislative body to hear, discuss or deliberate on any item within the subject matter jurisdiction of the body or the local agency; or (2) any use of communication, personal intermediaries, or technological devices through which a majority of the members develop concurrence as to action to be taken on an item. Sec. 54952.2.

2. No Need to Take Action. The Brown Act extends to a legislative body's “informal sessions or conferences” including briefings of members about matters even if no vote or action is taken. *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal. App. 4th 781. Collective acquisition and exchange of facts prior to the ultimate decision is part of “deliberation”. Sec. 54952.2; *216 Sutter Bay Ass'n v. County of Sutter* (1997) 58 Cal. App. 4th 860. The Act includes “deliberation as well as action” because “deliberation and action [are] dual components of the collective decision-making process” and “the meeting concept cannot be split off and confined to one component only[.]” *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal. App. 2d 41, 47 (superseded by statute on the issue of attorney-client privilege). A county board of supervisors’ attendance at a luncheon and discussion of a county workers’ strike with staff members, labor leaders and staff attorneys, was a “meeting” in violation of the Act, even though the board did not take any formal vote. *Id.* A pre-meeting briefing session held by a city council with the city manager, city attorney and planning director is a “meeting” subject to the open meeting requirements. 42 Ops.Cal.Atty.Gen. 61 (1963).

3. Serial Meetings. Serial meetings involve only a portion of a legislative body at any one time, but eventually involve a majority. The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision making. Except for teleconferencing, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body.” Sec. 54952.2(b).

Serial meetings may occur by either a “daisy-chain” or a “hub-and-spoke” sequence. In the daisy-chain scenario individual council members contact each other until a quorum and collective concurrence has been established. For example, a quorum of council members who achieve a

collective concurrence via e-mail cannot avoid a violation by posting the e-mails to a publicly accessible website. 84 Ops.Cal.Atty.Gen.30 (2001). The hub-and-spoke violation occurs when a staff member (the hub) communicates with members of a legislative body (the spokes) one by one for a decision on a proposed project and, in the process, reveals information about the members' respective views. *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95,

A legislative body member does have the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to engage in one-on-one discussions with staff on matters before the body where mere policy-related informational exchanges occur. *Wolfe v. City of Fremont* (2006) 144 Cal App 4th 533. However, if several one-on-one meetings or conferences leads to a "collective concurrence as to action to be taken" among a majority, the Brown Act has been violated. *Id.*

In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action. *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518. On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363. Such a memo, however, may be a public record. Sec. 54957.5(a)

B. What is Not a "Meeting" under the Brown Act?

The attendance of the majority of the members of a legislative body at the following gatherings does not constitute a meeting provided that a majority of the members do not discuss, other than as part of the scheduled program or meeting, business of a specific nature within the subject matter jurisdiction of the local agency. These gatherings include: (1) a conference open to the public that involves a discussion of issues of general interest, (2) an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the public agency, (3) an open and noticed meeting of another body of the local agency or of a legislative body at another local agency, (4) a purely social or ceremonial occasion, or (5) an open and noticed meeting of a standing committee of that body, where attending as observers. Sec. 54952.2(c). Again, these exceptions apply so long as no business is discussed among the members.

A hearing officer whose duty it is to deliberate alone does not have to do so in public. Since the Act uniformly speaks in terms of collective action, and because the term "meeting," as a matter of ordinary usage, conveys the presence of more than one person, it follows that two or more persons are required in order to conduct a "meeting" within the meaning of the Act. *Roberts v. City of Palmdale* (1993) 5 Cal 4th 363. Meetings between county staff members and representatives of solid waste haulers at which ideas were exchanged regarding possible boundaries for exclusive service areas and possible methods for establishing the rates for collection services were not subject to the Brown Act where any proposals formulated at these meetings would be presented to and reviewed by the board of supervisors for formal approval and adoption at an open and noticed meeting. 89 Ops.Cal.Atty.Gen. 241 (2006).

C. Meeting Types

1. Regular meetings. "Regular meetings" are meetings occurring at the dates, times and locations set by resolution, ordinance or other formal action by the legislative body and are subject to 72 hour posting requirements. Sec. 54954(a).

2. Special meetings. “Special meetings” are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda, under the Brown Act’s 24 hour notice requirements. Sec. 54956.

3. Adjourned meetings. “Adjourned meetings” are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted. Sec. 54955.

4. Emergency meetings. “Emergency meetings” are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice. Sec. 54956.5.

5. Teleconferenced Meetings. “Teleconferenced meetings” are meetings of the legislative body at which the members of the body are in different locations, connected by electronic means, either audio, video, or both. The Act permits such meetings but only if the following requirements are met: (1) each teleconference location is identified in the notice and agenda; (2) each location must be accessible to the public; (3) the agenda must provide public at each location the opportunity to address the legislative body; (4) the meeting is conducted in a manner that protects statutory, constitutional rights of all public members at each location; (5) roll call votes are made during the meeting; and (6) at least a quorum of legislative body are within the jurisdiction’s boundaries. Sec. 54953.

D. Meeting Locations and Facilities

Generally, all meetings must be held within the jurisdiction of the local agency. However, a legislative body may meet outside of the local agency’s jurisdiction: (1) to inspect real property; (2) to participate in interagency meetings in the jurisdiction of one of the agencies if all agencies give proper notice; (3) to comply with a court order; (4) where there is no Brown Act compliant meeting facility in the jurisdiction; (5) to meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction; (6) to attend a meeting in and relating to an agency facility outside of the jurisdiction; and (7) to meet with the agency’s attorney in closed session on pending litigation if it would reduce legal fees. Sec. 54954(b)(1)-(7).

Similarly, joint powers authority meetings can occur within the territory of at least one of its member agencies, and if its members are throughout the state, it may meet anywhere in the state. Sec. 54954(d). Finally, if a fire, flood, earthquake or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that requested notice of meetings must be notified of the designation by the most rapid means of communication available. Sec. 54954(e).

A Brown Act compliant meeting facility is one that is accessible to disabled persons, does not discriminate on the basis of race, religion, color, national origin, sex, etc., and does not require the public to make a payment or purchase in order to attend the meeting. Sec. 54953.2, 54961.

E. Meeting Agendas, Posting and Notice

1. General Agenda Requirements.

Agenda Item Descriptions. The Brown Act provides that for regular, special, and adjourned regular and special meetings not reconvened within five days, the body must post an agenda that

describes the business to be conducted at the meeting and provide notice for the meeting. The description of each item of business to be discussed or transacted at the meeting, including items to be discussed in closed session need only be a “brief general description” that generally need not exceed 20 words. Sec. 54954.2(a)(1).

The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body. The agenda description need not educate the public about all aspects of an item, as it would often be impossible in any "brief" or "general" way. But it does mean, among other things, that when it is possible to use a few words to alert the public to an obviously consequential or controversial proposal, a failure to do so could give rise to a successful legal challenge. For example, an agenda description stating “Public Employee (employment contract)” was insufficient to apprise that dismissal of an employee would be discussed at the meeting. *Moreno v. City of King* (2005) 127 Cal.App. 4th 17.

Additional Agenda Requirements. Meeting agendas must be structured so that public comment is permitted before or during the body's consideration of an agenda item. Agendas must include notice regarding availability of agenda materials in alternate formats for ADA compliance. Weekend hours may be counted as part of the 72-hour period for the posting of an agenda prior to the regular meeting of the legislative body of a local agency. The posting of an agenda for a regular meeting of the legislative body of a local agency for 72 hours in a public building that is locked during the evening hours would not satisfy the statutory requirements for posting the agenda. 78 Ops.Cal.Atty.Gen. 327 (1995). But an agenda posted on a touch-screen electronic kiosk accessible without charge 24 hours a day would satisfy the agenda posting requirement. 88 Ops.Cal.Atty.Gen. 218 (2005).

2. Regular Meetings. In addition to the above “General Agenda Requirements”, agendas for regular meetings must: (1) be posted 72 hours prior to the meeting; (2) specify the time and place of the meeting; (3) be posted in a location freely accessible to the public and at any teleconference site; (4) be mailed with the agenda packet to any person requesting notice annually in writing and for which a cost-based fee may be imposed; and (5) provide a time for public comment on matters not on the agenda but within the subject matter jurisdiction of the legislative body. Sec. 54954.1, 54954.2, 54954.3.

3. Special Meetings. The Brown Act requires that special meetings may be called only by the presiding officer or a majority of the body and that written “notice” of such call must: (1) be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public; (2) be given to every member of the legislative body personally or by any other means received at least 24 hours prior to the meeting, but can be waived by members of the body in writing at or prior to the meeting or by their presence at the meeting; (3) be given to each local newspaper of general circulation, television and radio station requesting notice in writing; (4) specify the time and place of the special meeting and the business to be transacted or discussed; and (5) provide for public comment but only on the items in the notice. Sec. 54956. While the Act does not specifically require preparation of a special meeting agenda, best practice is to do so.

4. Emergency Meetings. Generally speaking, emergency meetings may be held on one-hour’s notice or less in an “emergency situation” when prompt action is necessary due to the disruption or threatened disruption of public facilities. The emergency meeting may be held without complying with either the 24-hour notice or posting requirements for special meetings. Sec. 54956.5(b)(1). However, all other special meetings requirements do apply. Sec. 54956.5(d).

An “emergency situation” includes an “emergency” or “dire emergency”. An “emergency” is a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both. A “dire emergency” is a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses such an immediate and significant peril that requiring even one-hour notice before the meeting may endanger the public health, safety, or both. The fact of the existence of an “emergency” or a “dire emergency” must be determined by a majority of the legislative body members before the emergency meeting proceeds on such shortened notice. Sec. 54956.5(a)(1),(2).

The legislative body may meet in closed session during an emergency meeting, if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present. Sec. 54956.5(c).

The legislative body’s presiding officer or designee must give notice of an emergency meeting, to each local newspaper of general circulation and radio or television station that requested notice of special meetings (“Media Requestors”), one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the Media Requestor’s most recent request for notification of special meetings shall be exhausted. If telephone services aren’t functioning, these notice requirements are deemed waived. But as soon after the meeting as possible, the presiding officer or designee must notify the Media Requestors of the fact of the emergency meeting, the meeting’s purpose, and any action taken at the meeting. Sec.54956.5(b)(2). Also, as soon after the meeting as possible, the legislative body must post for a minimum of ten days in a public place, the meeting minutes, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting. Sec. 54956.5(e).

5. Adjourned Regular and Special Meetings. The legislative body or less than a quorum of the body may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the adjournment. When a regular or adjourned regular meeting is adjourned, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour otherwise specified for regular meetings. Sec. 54955.

6. Continued Hearings. Any hearing being held, or noticed or ordered to be held, by a legislative body at any meeting may by order or notice of continuance be continued or reconvened to any subsequent meeting of the legislative body in the same manner and to the same extent as for the adjournment of meetings. However, if the hearing is continued less than 24 hours, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting from which the hearing was continued. Sec. 54955.1.

7. No Discussion of Unagendized Items. The Brown Act proscribes legislative body discussion or action on any item not on the agenda. However, legislative body members may: (1) briefly respond to statements made or questions posed by members of the public during public comment; (2) ask questions for clarification; (3) make brief announcements, or reports on his or her

activities, (4) provide a reference to staff for factual information, (5) request staff to report back on a matter at a subsequent meeting, (6) direct staff to place a matter of business on a future agenda; and (7) report on local agency reimbursed meetings and travel. Sec. 54954.2, 53232.3(d).

8. Adding Items Not on the Agenda.

Immediate Action Needed. Only at regular meetings may items be added to the agenda at the meeting if the body makes the following findings by a two-thirds vote of members present (or a unanimous vote if less than two-thirds of members present): (1) there is a need to take immediate action; and (2) the need to take action came to the local agency's attention after posting the agenda. Sec. 54954.2(b)(2).

Special Meetings. No business other than that included in the meeting call notice shall be considered at a special meeting. Sec. 54956.

Emergency Action Needed. When a majority of the legislative body determines that an emergency situation exists as defined in Section 54956.5(b)(1), such emergency matters may be added to the agenda subject to the emergency meeting notice provisions and requirements discussed above. Sec. 54956.5.

Items Continued Five Days or Less. An agendaized matter continued to a meeting no more than five days later need not be re-agendaized. Sec. 54954.2(b)(3).

9. Placement of Items on Agenda. Neither the Brown Act nor case law create a general right for the public to place items on the agendas of public bodies. The local agency's policies and ordinances govern placement of items on an agenda. The Brown Act does not require an agency to allow members of the public to address it on whether to place an item on the agenda. *Coalition of Labor Agriculture & Business v. County of Santa Barbara Board of Supervisors* (2005) 127 Cal.App.4th 17.

F. Special Notice—Taxes and Assessments

The Brown Act's notice and hearing requirements associated with new or increased taxes and assessments are quite complex and are in addition to requirements of other applicable law.

The exceptions to these requirements have subsumed most of the rules. The requirements do not apply to: (1) fees not exceeding the reasonable cost of providing the service; (2) service charges or benefit charges; (3) ongoing annual assessments if imposed at the same or lower amount as any previous year; (4) assessments not exceeding an assessment formula or range of assessments previously adopted by the agency or approved by the voters; (5) standby or immediate availability charges; and (6) any new or proposed assessment subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution. Sec. 54954.6(a)(1), 54954.6(h).

Before any new or increased tax and assessment is adopted, the legislative body must conduct at least one public meeting at which public testimony is allowed on the tax or assessment, in addition to the public hearing at which the body proposes to adopt the tax or assessment. Sec. 54954.6(a)(1). Joint notice of the public hearing and public meeting must be given not less than 45 days prior to the hearing, with the public meeting occurring no sooner than ten days after the first notice and at least seven days before the public hearing. Sec. 54954.6(b)(1). The costs of notices, meetings and hearings are recoverable from the proceeds of the tax or assessment. Sec. 54954.6(g).

IV. Public's Rights

A. Meaningful Opportunity for the Public to Comment

Public comment must be permitted before or during the body's consideration of an agenda item. Sec. 54954.3. Additionally the public may comment on any item of interest within the subject matter jurisdiction of the body. Sec. 54954.3(a).

B. Limiting Public Comment

The legislative body may adopt reasonable regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Sec. 54954.3(b). At least one court has determined a two minute time limit for individual speakers is reasonable. *Chaffee v. San Francisco Pub. Library Comm'n.* (2005) 134 Cal.App.4th 109. The Brown Act does not specify a three-minute time period for comments, and does not prohibit public entities from limiting the comment period in the reasonable exercise of their discretion. *Id.* Public comment is required only once per agenda, not per meeting. A two-day meeting with a single agenda need only provide for a public comment period during one of the days. *Chaffee v. San Francisco Library Comm'n.* (2004) 115 Cal. App. 4th 461.

Public comment is not required where a committee comprised solely of members of the legislative body has previously considered the item at a public meeting in which all members of the public were afforded the opportunity to comment on the item before or during the committee's consideration of it, so long as the item has not substantially changed since the committee's hearing. Sec. 54954.3(a). There was no violation of the Brown Act the legislative body failed to hear public comments regarding a city resolution during a meeting, because the public had the requisite opportunity to comment on the resolution at an earlier committee hearing, and the resolution did not substantially change from that time. *Jenkel v. City & County of San Francisco* (2006, N.D. Cal.) 2006 US Dist LEXIS 49923.

The Brown Act also does not require that a legislative body allow members of the public to address it concerning whether an item should be placed on the agenda. *Coalition of Labor v. County of Santa Barbara Bd. of Supervisors* (2005) 129 Cal.App.4th 205.

The legislative body cannot prohibit public criticism of the policies, procedures, programs or services of the agency or of the acts or omissions of the legislative body. Sec. 54954.3(c). Public meetings of legislative bodies have been found to be limited public fora, and attempts to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Therefore, policies that prohibited members of the public from criticizing school district employees were unconstitutional. *Leventhal v. Vista Unified School Dist.* (1997) 973 F.Supp. 951; *Baca v. Moreno Valley Unified School Dist.* (1996) 936 F.Supp. 719.

If a meeting is willfully interrupted by a group or groups of persons so the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of those persons willfully interrupting the meeting, the legislative body may order the meeting room cleared and continue in session. Of course, only matters appearing on the agenda may be considered during such a session. Representatives of the press or other news media, except those participating in the disturbance, have the right attend the session. The legislative body may establish a procedure for readmitting the persons not responsible for willfully disturbing the orderly conduct of the meeting. Sec. 54957.9.

C. Right to Record Meetings.

A legislative body must permit audio and video tape recordings of meetings by the public and by the media unless recording cannot be done or continued without noise, illumination or obstruction of views that constitute a disruption of the meeting. Sec. 54953.5(a), 54953.6.

D. Rights to Writings Available to Majority of Body

All materials distributed to a majority of the legislative body in connection with a matter to be discussed at a Brown Act meeting, except privileged items, are public records, and must be available for inspection and copying "without delay". Sec. 54957.5(a). If writings, that are public records and prepared by the agency or member of the body, are distributed by the local agency during a meeting, copies must be available for public inspection immediately. Sec. 54957.5(b). If they were prepared by some other person they must be available after the meeting. Upon request by a person with a disability, the writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990. Sec. 54957.5(b).

E. Other Rights.

Among the other rights afforded to the public by the Brown Act are: the right to attend the meeting without payment or purchase (Sec. 54951); the right to attend and comment without signing in (Sec. 54953.3); the right to attend teleconference locations (Sec. 54953(b)(3)); the right to use teleconferencing for public comment or testimony (Sec. 54953(b)(3)); and the right to know how members voted ((Sec. 54953(c)) (secret ballots prohibited). If an attendance list, register or similar document is posted at or near the entrance to the meeting room or circulated to attendees, it must state clearly that such signing, registering, is voluntary. Sec. 54953.3.

V. "Open and Public" Exceptions —Closed Sessions

A. Common Closed Sessions

No legislative body of a local agency may meet in closed session except as authorized under the Act. Sec. 54962. The Brown Act expressly abrogates and is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings. Sec. 54956.9. A number of the most frequently used closed sessions are discussed below.

1. Pending Litigation. The Brown Act exception allowing closed sessions to discuss pending litigation actually encompasses three distinct types of litigation. The first is "existing litigation" that has already been formally initiated against the local agency. Sec. 54959(a). The second is "significant exposure to litigation" that applies when based on "existing facts and circumstances" the legislative body either (1) has determined on advice of agency legal counsel there is a significant exposure to litigation against the agency, or (2) is meeting only to decide whether a closed session is authorized under this exception. Sec. 54956.9(b)(1)-(3). The third is where the agency is considering "initiation of litigation" against a third party or parties. Sec. 54956.9(c).

"Litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. Sec.

54956.9. The litigation is considered pending against a local agency if an officer or employee of the agency is a party or has significant exposure to litigation concerning activities during the course of scope of his or her office or employment or in which it is an issue whether the activity is outside the course and scope of the office or employment. Sec. 54956.9(c).

In determining whether there is significant exposure to litigation against the agency, existing facts and circumstances must fall into one of these three categories. (A) Facts and circumstances exist that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, in which case such facts and circumstances need not be disclosed. (B) Facts and circumstances exist, such as 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, in which case the facts or circumstances shall be publicly stated on the agenda or announced. (C) The agency received a claim under the Tort Claims Act or a written communication from a potential plaintiff threatening litigation, in which case the claim or communication must be available for public inspection under Section 54957.5. Sec. 54956.9(b)(3)(A)-(C).

While the Brown Act authorizes approval of litigation settlement agreements in closed sessions, it does not empower a legislative body, as part of a non-publicly ratified litigation settlement agreement, to take action that by substantive law could not be taken without a public hearing and an opportunity for the public to be heard (zoning and land use density commitments by City rendered settlement agreement invalid). *Trancas Property Owner's Association v. City of Malibu* (2006) 138 Cal.App.4th 172.

2. Personnel Matters. The purposes of this exception are to protect the public employee from public embarrassment and to permit free and candid discussions of personnel matters by a legislative body. *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal. App.4th 568. The personnel exception permits closed sessions “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.” Sec. 54957(b)(1). Except for consideration of reducing compensation resulting from the imposition of discipline, a closed session to discuss or take action on proposed compensation of a public employee does not fall with this exception, but rather the “labor negotiations” exception should be considered., Sec. 54957, see Sec. 54957.6.

The public employees subject of this exception include officers (city managers, city attorneys), independent contractors who function as officers or employees but do not include elected officials, members of a legislative body or other independent contractors. Sec. 54957(b)(4).

“Evaluation of performance” has been expansively interpreted to allow a performance evaluation in closed session to include discussions of particular instances of job performance, rather than a comprehensive annual, formal or periodic review of such performance. *Duval v. Board of Trustees* (2001) 93 Cal.App.4th 902. “Performance evaluations conducted in the due course of [public agency] business are not in the nature of an accusation and are not normally thought of as being ‘brought against the employee.’” *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876, 879-880, 882-883.

When the closed session is to hear complaints or charges against employees the legislative body must give the employees subject of the closed session written 24-hour notice of the right to be heard in open session prior to considering their proposed action. Sec. 54957. A public employee’s performance evaluation is not a “hearing of complaints or charges” requiring 24-hour notice to the employee. *Moreno v. City of King* (2005) 127 Cal.App.4th 17. Negative comment in an

employee's performance evaluation does not constitute a "complaint or charge" with the meaning of Section 54957. *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672. On the other hand, a public agency that receives accusations of misconduct and considers whether to dismiss an employee based on those accusations must give advance notice to the employee because its actions do amount to a hearing of "complaints or charges." *Id.* at 683-684. 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 the body is investigating. Sec. 54957(b)(3).

Simply considering whether to dismiss an employee, where the dismissal is not based on accusations of misconduct, does not amount to a hearing of "complaints or charges" and therefore does not require advance notice to the employee. *Fischer v. Los Angeles Unified School Dist.* (1999) 70 Cal.App.4th 87, 97-100. Where complaints or charges have already been heard and sustained at a public evidentiary hearing, the body may hold a closed session to consider whether to discipline or dismiss the employee without giving the employee advance notice. *Bollinger v. San Diego Civil Service Com.* (1999) 71 Cal.App.4th 568, 571, 574-575.

3. Real Property. The scope of real property closed sessions is limited to instructing an agency negotiator regarding "price and terms of payment" in connection with the purchase, sale, lease or exchange of property by or for the agency. Sec. 54956.8 Discussion of topics such as EIR mitigation measures, effects of redevelopment on homeless, ballpark project financing and naming rights, authority to hire a ballpark manager, and obtaining project consultants was deemed outside the statutory authority for real property closed sessions associated with development of Petco Park in San Diego. *Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904.

The purpose of this exception arises out of the realities of the commercial market place and the need to prevent the person with whom the local government is negotiating from sitting in on the session at which the negotiating terms are developed. No purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set, and the same is true for minimum sale prices and lease terms and the like. *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324.

4. Labor Negotiations. This exception authorizes a legislative body to meet in closed session for the purpose of reviewing its position and instructing the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation. Discussions 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. Prior to the closed session, the legislative body must, in open and public session, identify its designated representatives. Closed sessions held under this exception shall not include final action on proposed compensation of one or more unrepresented employees. Sec. 54957.6.

Labor negotiation closed sessions may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees, but not regarding all meet and confer issues—only those related to salaries and benefits. 61 Ops.Cal.Atty. Gen. 323 (1978). In addition to the negotiator, a state conciliator who has intervened in the proceedings regarding the compensation issues being discussed, may also attend the closed session. Sec. 54957.6 (a). "Employee" under this exception includes officers or independent contractors who function as officers or employees, but does not include any elected official, legislative body members, or other independent contractors. Sec. 54957.6(b).

5. Other. The Brown Act also expressly authorizes closed sessions to discuss:

- ◆ Investment of pension funds. Sec. 54956.81.
- ◆ Applications by an employee to make an early withdrawal of deferred compensation plan funds on the basis of hardship, Sec.54957.10.
- ◆ Threats to public buildings or essential public services and there is a need to confer with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their deputies, or a security consultant or operations manager, regarding threats to the security of public buildings, essential public services, such as water, drinking water, wastewater treatment, natural gas and electric service, or to the public's right of access to public services or public facilities. Section 54957.
- ◆ License applicants with criminal records, where necessary to determine whether the applicant is sufficiently rehabilitated to obtain the license. The applicant has certain rights under this exception, including the right to attend the closed session along with the applicant's attorney, and to withdraw the application if the body decides to deny the application, thereby entitling the applicant to keep all matters relating to the closed session confidential. Sec. 54956.7.

6. Closed Sessions by JPAs. To address the untenable position faced by representatives of member entities of joint powers agencies who could not share confidential information acquired during the JPA closed session with his or her own member agency and member agency's counsel, (*see* 86 Ops.Cal. Atty. Gen. 210 (2003), in 2004 the legislature added Section 54956.96 to the Government Code setting out a procedure by which such confidential information may be shared. Sec. 54956.96. The member agency may conduct a closed session to discuss the confidential information obtained during the JPA closed session only if the JPA does the following. The JPA adopts a policy, bylaw or joint powers agreement provision that authorizes a legislative body member of a member local agency to disclose confidential JPA closed session information that has direct financial or liability implications for that local agency to: (1) member local agency legal counsel for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member agency; and (2) other legislative body members present in a closed session of that member local agency.

B. Closed Session Agenda Requirements

Closed sessions must be listed on the agenda or notice. At least 72 hours prior to each regular meeting, legislative bodies must prepare an agenda containing a brief general description of each item to be transacted or discussed, including items which will be handled in closed session. Sec. 54954.2(a). If a legislative body uses the Act's closed session "safe harbor" language, the body cannot be found in violation of Brown Act agenda requirements. Sec. 54954.5.

In addition, the Brown Act requires the legislative body to orally announce the items to be discussed in closed session prior to the closed session. This may be satisfied by referring to the item by number as it appears on the agenda. In the closed session, the legislative body can only consider those matters described in the statement. Sec. 54957.7(a).

If a session is closed pursuant to subdivision (a) of Section 54956.9 (pending litigation), the body must state the title of the case or otherwise identify the litigation to be discussed, "unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage." Sec. 54956.9(c).

A real property closed session agenda description must identify the real property at issue, the individual who will act as the agency's negotiator, and the persons with whom its negotiator may negotiate. Sec. 54956.8. The agency may designate a member of the body, a staff person, the agency's attorney or another person to serve as its negotiator. 54956.8, but the negotiator has to be pursuing some specific transaction. A general area description such as "real property interests in the East Village area of downtown San Diego, and at Qualcomm Stadium in the City of San Diego" and "real estate interests in the Centre City East area of downtown San Diego" is inadequate under the Brown Act. *Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904.

C. Who may attend?

"Semi-closed" sessions are impermissible under the Brown Act. "The general rule is that closed-session access is permitted only to people who have an official or essential role to play in the closed meeting." 86 Ops.Cal.Atty.Gen. 210, 215 (2003). Usually, closed sessions may involve only the legislative body members plus any additional support staff which may be required (e.g., attorney required to provide legal advice; supervisor may be required in connection with disciplinary proceeding; labor negotiator required for consultation). For example, a county retirement board's closed session to determine on the merits of the disability retirement application may include the applicant and his or her representative. 88 Ops.Cal.Atty.Gen 16 (2005).

Persons without an official role in the meeting should not be present such as members of the public, media or grand jury performing investigative duties. Alternate members of a legislative body when they are not serving in place of a regular member, may not attend closed sessions of the body. 82 Ops.Cal.Atty.Gen. 29 (1999). The mayor of a charter city, whom the charter designated as the executive head of the city, may not attend a closed session of the city's redevelopment agency, the members of which are appointed by the mayor with the approval of the city council, when the purpose of the closed session is to conduct a conference with the agency's real property negotiators who are negotiating the disposition and development of property, a portion of which is owned by the city, for construction of a publicly financed and publicly owned city conference center and privately financed and developed hotel complex. 83 Ops. Cal. Atty. Gen. 221 (2000).

D. Report out

Certain actions taken during closed sessions must be reported out. Once a closed session has been completed, the legislative body must convene in open session. Sec. 54957.7(b). If the legislative body took final action in the closed session, the body may be required to report the action taken (either orally or in writing), and the breakdown of the vote, abstentions, and other particulars. Sec. 54957.1.

In the case of a contract or settlement of a lawsuit copies of the document also must be disclosed as soon as possible. Sec. 54957.1(b) and (c). If final action is contingent upon another party, the legislative body need not release a report about the closed session. Once the other party has acted, making the decision final, the legislative body must respond to inquiries for information about the decision by providing a report of the action. Sec. 54957.1(a).

When the session is closed due to significant exposure to litigation, unless the facts and circumstances creating the threat are not yet known to the likely plaintiffs, and authorization is given to defend, seek or refrain from seeking appellate review, it must be announced to the public. The body must report out an action taken to appoint, employ, dismiss, accept the

resignation of or otherwise affect a public employee's employment status, and state the name of the position. However, the report of a dismissal or nonrenewal of an employment contract shall be deferred until the first public meeting following exhaustion of administrative remedies. Sec. 54957.1(a)(5). An action to recommend appointment of an employee need not be reported out. *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal. App. 4th 1165. Also, a decision in closed session to not dismiss an employee need not be reported out. 89 Ops.Cal.Atty. Gen. 110 (2006). An employee or former employee subject of such a report out has no cause of action against the legislative body making the report out for injury to a reputational, liberty, or other personal interest. Sec. 54957.1(e). Approval of an agreement concluding labor negotiations with represented employees in closed session must be reported after the agreement is final and has been accepted or ratified by the other party, with the report identifying the item approved and the other parties to the negotiation. Sec. 54957.1(a)(6).

There must be a report out of the vote and substance of the agreement from a real estate closed session where the body's agreement finally concludes real estate negotiations or if final approval rests with the other party, the fact of the body's approval and substance of the agreement must be disclosed to any person inquiring, after the other party's final approval. Sec. 54957.1(a)(1).

E. Confidentiality

No person may disclose confidential information acquired by attending a proper closed session to a person not entitled to receive it, unless authorized by the legislative body. Sec. 54963(a). Confidential information means communication during a closed session specifically related to the basis of closed session. Sec. 54963(b). Confidential information obtained during a JPA closed session may be shared with the JPA member agencies and agencies' counsel by following the procedures under Section 54956.96. Members of a legislative body cannot be compelled to disclose their recollection of an unrecorded closed session pursuant to discovery requests in a writ proceeding alleging a Brown Act Violation. *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324.

A legislative body does not waive the confidentiality of its closed session minutes when it discloses minutes to the district attorney under an agreement to keep the minutes confidential pursuant to Government Code Sections 6254.5(e) and 6254(f). *County of Los Angeles v. Superior Court* (2005) 130 Cal.App.4th 1099. However, it is uncertain whether a federal court would regard the confidentiality as waived, due to the absence of a federal statute comparable to Government Code Sections 6254.5(e) and 6254(f).

VI. Remedies for Act Violations

A. Criminal penalties

Each member of a legislative body who attends a meeting where action is taken in violation of the Brown Act with the wrongful intent to deprive the public of information to which it is entitled is guilty of a misdemeanor. Sec. 54959. "Action taken" means not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision. Sec. 54952.6. Criminal liability does not arise where mere deliberation, but no action is taken at the meeting. Cities lack authority to make Brown Act violations misdemeanors under their local codes. 76 Ops.Cal.Atty.Gen. 289 (1993).

B. Civil Actions

A district attorney or any interested person has standing to bring an action to enjoin violation of the Brown Act or declare an action taken by the legislative body in violation of the Act void. A citizen of the State of California, but not of the school district, was an “interested person” within the meaning of Sections 54960 and 54960.1 and had standing to sue a school district for Brown Act violations. *McKee v. Orange Unified School Dist.* (2003) 110 Cal App 4th 1310. However, city council members forfeit their standing to sue the city council for alleged violations of the Brown Act when they accept their seats on the city council. *Holbrook v. City of Santa Monica* (2006) 144 Cal. App.4th 1242.

Remedies for violations are: (1) demand that the body cure and correct the violation, and if they do not, then sue to have the action voided; or (2) simply sue to have a court declare that the body violated the Brown Act and enjoin it from doing so in the future. Sec. 54960, 54960.1. Courts may award attorney's fees and costs to a successful plaintiff. Sec. 54960.5.

Very short deadlines and technical requirements apply to either remedy. The notice and demand to “cure and correct” the violation must be given, in writing, within 90 days from the date the action was taken. Sec. 54960.1(b). This is shortened to 30 days if the basis for the notice and demand is that the action was not on an agenda or not adequately described. The local agency then has 30 days to take action. If the local agency responds and refuses to correct the problem or does nothing, the challenger has 15 days to initiate court proceedings to nullify the action.

Not all actions in violation of the Brown Act may be cured and not all actions can be declared void. Such actions include those taken: (1) in connection with the issuance of notes or bonds, (2) on a contract and the other party has, in good faith and without notice of the challenge, detrimentally relied, (3) in connection with connection with collection of a tax, or (4) in substantial compliance with the Brown Act. Sec. 54960.1(d). *Furtado v. Sierra Community College* (1998) 68 Cal. App. 4th 876. The cure provisions of Section do not apply to a violation of section 54957. When there has been a failure to give an employee advance notice of a hearing on specific complaints or charges, "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." Sec. 54957. The trial court's finding is supported by the record, and the remedy imposed by the court was mandated by section 54957. *Moreno v. King* (2005) 127 Cal.App.4th 17.

In the absence of statutory authority, an argument that an appellate court should recognize a civil cause of action for aiding and abetting a violation of the Brown Act was rejected. *Wolfe v. City of Fremont* (2006) 144 Cal App 4th 533.

C. Disclosure of Confidential Information

If Section 54963's prohibition against disclosure of confidential information is violated, legal remedies include: (1) injunctive relief to prevent the disclosure; (2) disciplinary action against an employee willfully disclosing the confidential information if the employee previously received training or notice of the prohibition; and (3) referral to the grand jury of a legislative body member who willfully disclosed the confidential information. Sec. 54963(c).