PUBLIC LAW

CALIFORNIA LAWYERS ASSOCIATION

presents

Public Law 101 Conference

Dysfunction Junction: Brown Act In-Meeting Challenges

Wednesday, November 15, 2023
9:30 a.m. – 11:45 a.m.

Speakers:

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Conference Reference Materials

Christi and Mike are Of Counsel with Best Best & Krieger and have each served as city attorney for numerous municipalities in southern California for over 40 years. Mike served as chair of the Brown Act Committee of the CalCities' City Attorney's Department for many years, and chair of the editorial committee of the League's publication "Open & Public." Christi has litigated multiple Brown Act cases in her career as a municipal litigator. Mike and Christi regularly provide training programs to elected officials, city staff and city attorneys, including their trademark Dysfunction Junction program.

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OPEN MEETINGS BEHIND CLOSED DOORS (*plus 10 bonus pro tips*)

by Christi Hogin

Presented by Christi Hogin & Michael Jenkins
in connection with
Dysfunction Junction City Council
Irregular Meeting

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OPEN MEETINGS BEHIND CLOSED DOORS
(plus 10 bonus pro tips)

As public agency attorneys we can play an important role in building and reinforcing the bonds of trust between local government and its citizenry. Our job is to promote the rule of law and to foster a culture of compliance. When we perform well, we can increase the confidence in local government and provide reassurance that the government is functioning within the confines of the law. One place where this source of reassurance is most useful is in closed session.

The Brown Act is a perfect host to American representative democracy. As is bluntly stated in the Act's express legislative intent, power is delegated to institutions and elected officials — delegated along with a healthy dose of skepticism:

> 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.

Government Code § 54950.

Leaning strongly in favor of open and public meetings, the Legislature — to which the Brown Act does not apply 😉 — still recognized that there are a narrow set of circumstances under which a public meeting is actually not in the best interests of the public. These are the matters where the members of a Brown Act body must represent the public interests outside of the public view — a circumstance not in natural harmony with the intent of the statute. Indeed, closed sessions are an exception to the state's strong policy that local governments' "actions be taken openly and that their deliberations be conducted openly." *See* Gov't Code §54962. Exceptions that permit closed sessions must be narrowly construed. *See* Cal. Const. art. 1 § 3 (a statute "…shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.").

The best way to approach whether an item should be considered in closed session is to consider how *the public* would benefit from a closed session. Would it disadvantage the city (read: public/taxpayers) in litigation for opposing counsel to be privy to the city attorney's assessment of the case? Would the city be able to garner the best price for property if the seller's representative attended the council's meeting with its negotiator when developing an offer? Would the city be able to recruit and retain top management employees if their performance

reviews were held in public? Each of the circumstances under which the Brown Act authorizes a closed session supports the underlying policy that favors open meetings, except when it's to the specific detriment of the public to have its representatives conduct an aspect of the People's business in public.

Detriment to the public interest is not itself a basis for closed session. Instead, a Brown Act body may meet in closed session under the narrow exceptions defined in the statute — to the extent that discussion in open session would be detrimental to the public interest. For example, the general desire to avoid being sued over a controversial ordinance does not justify a closed session. Negotiation of a professional services agreement is not an express basis for a closed session and therefore discussions, including instruction to negotiators, must be done in open session. If discussion exceeds the scope of the exception that permits a closed session, the council is having an illegal meeting. While each member of a Brown Act dose is responsible for compliance with the law, as counsel to the public agency, whenever present in closed session, it is also the attorney's job to keep the conversation in bounds.

The specific statutory exemption that authorizes the closed session must be stated on the agenda. Gov't Code §54954.2. The Brown Act provides closed session descriptions for each permitted exception and states "[n]o legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section." Gov't Code § 54954.5; see *Castaic Lake Water Agency v. Newhall County Water Dist.* (2015) 238 Cal.App.4th 1196, 1205. These form descriptions provide "safe harbor."

All closed session meetings start in open session. There are two items of business that must take place in open session before holding a closed session: disclosure and public comment. The Brown Act requires that, before recessing to closed session, the city must publicly disclose the items to be discussed in closed session. This public announcement may be made by reference to the items by number or letter as they are listed on the agenda. Gov't Code §54957.7; *see also* Gov't Code §54956.9. The Brown Act also requires that each meeting provide an opportunity for public comment on agenda items before (or during) the Council's consideration of the item. Gov't Code §54954.3. The closed session agenda is no exception.

No minutes of closed session are required by the Brown Act (but it is obviously a good idea for someone to know exactly what happened in closed session). Some documentation of closed session action takes place in the public session. After the closed session, a written or oral report is required of certain actions. Gov't Code §54957.1.

Ten *Pro Tips* for closed sessions:

1. Closed session is a choice.

The Brown Act authorizes closed sessions under narrowly defined circumstances but it does not require them. For example, if a developer has sued a city to challenge a land use decision, the city council may discuss settlement of the pending litigation in closed session. Specifically, "based on advice of legal counsel" when the city council determines "discussion in open session concerning those matters would prejudice the position of the local agency in the

litigation." However, because the proposed development may impact neighbors who are not a party to the lawsuit, the city council may be better served by a public discussion of any proposed settlement. Before advising that a matter should be discussed in closed session, the agency attorney should make a conscientious assessment of the particular facts of the matter.

2. The public interest is the reason for closed session.

In determining whether to advise that a matter be held in closed session, only the best interests of the public should drive the advice.

A closed session cannot be used to advise the council of the legal vulnerabilities of an ordinance because someone *might* sue over it. The city attorney may convey confidential legal advice in writing, but cannot convene a closed session to convey the advice. See *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

A closed session cannot be used for "team building" among the councilmembers or between the council and the staff, even if no "city business" will be discussed. The public is entitled to observe the manner in which the council conducts itself as well as the deliberations on substance. In other words, developing mechanisms to get along with one another is "city business."

3. Safe harbor descriptions require specific information

Government Code §54956.9(g) requires the agency to announce the subparagraph under paragraph (d) that authorizes a closed session for litigation matters. If the basis of the closed session is to discuss a lawsuit that has been filed, the name of the case must be on the agenda (or announced publicly) unless to do so would jeopardize the agency's ability to effect service or to conclude settlement negotiations to its advantage.

If the council or board is meeting to discuss initiation of litigation or exposure to litigation, additional information beyond the safe harbor language [Gov't Code §54954.5] may be required on the agenda (or announced publicly) to satisfy the Brown Act. The agenda should include reference to the "facts and circumstances," as defined by the Brown Act, that authorize the closed session. Usually this will be a reference to a letter threatening litigation, description of a claim that has been filed with the agency, or a brief description of the "accident, disaster, incident, or transactional occurrence that might result in litigation" against the agency. Gov't Code §54956.9 (e)(2)-(5). This additional information is not required where it would reveal facts to otherwise unaware plaintiffs subjecting the city to potential liability or reveal the identity of a victim or alleged employee perpetrator of unlawful sexual conduct.

4. A performance evaluation is not an agency goal-setting session

The Brown Act allows the council or board to conduct a performance evaluation of its direct appointees, usually that will include at least the agency manager and the agency attorney. Gov't Code §54957. The purpose of the exception is to protect the employees' privacy (and prevent any lawsuits against the agency for violating any privacy rights), to create an

environment for candid feedback in furtherance of a well-functioning organization, and to attract and retain quality employees by handling performance evaluations in a professional and effective manner.

Sometimes councils or boards are tempted to use the privacy of the employee evaluation to address new goals of the agency or dynamics among the members unrelated to the manager's performance. The attempt to introduce topics of broader agency policy or council/board functioning is generally made with an obviously-too-broad scope of the manager's responsibility. This can take the form of deciding to set goals for the manager like "identify sites for new city hall" or "initiate business license amendments that will regulate commercial cannabis businesses." If the agency has already in its public sessions decided to build a new city hall or regulate commercial cannabis businesses, then the evaluation may be focused on setting timelines or expectations for status updates. But if these topics have not been discussed in public, the manager's performance evaluation is not the place for the council/board to deliberate about whether to start committing resources to exploring property for a new city hall or whether to regulate commercial cannabis businesses. Another possible detour from the permissible scope of the discussion is where the council's real interest is in discussing their criticisms of the police chief or other department head hired by the manager. While the effectiveness of the manager's supervision and staff development is certainly fair ground for a performance evaluation, detailed discussion of the performance of others is generally beyond the scope of the manager's performance.

Using an evaluation form (the League of California Cities has several samples) is one way to assist the council in focusing on appropriate factors and limiting the scope of the discussion to comply with the Brown Act. More importantly, a agency attorney should not sit quietly while a council/board veers off-topic. When present in closed session, whatever else the attorney may be there for, the public should be able to count on the agency attorney to speak up if the council/board discussion exceeds the scope of the permissible closed session.

Note that the Brown Act specifically prohibits discussion of employee compensation, except in context of labor negotiations. No closed session convened for a performance evaluation of a city manager may include a discussion between the manager and the council/board about compensation in closed session.

5. An agenda is no place for misdirection

The Brown Act agenda requirement is the way that the city communicates to the public in advance what will be on the agenda so the members of the public may make informed decisions about whether to attend the public portion of the council meeting. The public's right to attend and especially the public's ability to participate in local agency meetings are protected by the California Constitution and the Brown Act. Obviously, the agenda must include any item of business that the council/board will discuss in closed session. Some agencies list all pending litigation items on every agenda so that they *may* discuss them, even if they don't intend to (have any need to) at the time the agenda is posted. While certainly a practice to the convenience of the agency and arguably compliant with the letter of the law, the practice imposes a disadvantage

to the public in that one could not discern from the agenda what matters will be discussed. That fact alone makes the practice suspect, but also consider that items listed routinely that do not meet the standard ("based on advice of legal counsel" "discussion in open session concerning those matters would prejudice the position of the local agency in the litigation") are not proper subject matters for closed session, even if litigation has been filed.

The better practice (by far) is to list the closed session items that the council/board has a statutory basis and need to discuss in closed session on the agenda. If the council/board runs short on time or doesn't take up an item posted for whatever reason, when making the closed session announcement simply state that. Here is an example:

> "The council met in closed session and tonight discussed the first item listed on the closed session agenda, performance evaluation of the city manager, but did not have time to discuss the second item listed on the closed session agenda, the litigation matter. The litigation matter will be placed on next meeting's agenda for council consideration at that time."

6. Agency negotiator has to be designated in public session

Here is a sometimes overlooked passage of the Brown Act: with respect to labor negotiations, "...prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives." Gov't Code §54957.6(a). This is *in addition* to the requirement that the agency's designated representative be listed on the agenda (safe harbor language).

7. Real estate decisions often require an open session discussion

The only aspect of a real estate transaction authorized for closed session is "price and terms of payment." Gov't Code §54956.8. The use of the property and site design are matters for the public session. Any topic involving the purpose of the transaction is for public session; closed session is limited to price and terms of payment to avoid disadvantage given the city/agency (read taxpayer) in the monetary negotiation. See *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904.

8. Legislative findings based on legal advice should satisfy the statute

Under Section 54956.9(d), "based on legal advice," the agency may convene a closed session to discuss litigation "when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation." As discussed above, the agency attorney must be deliberate in assessing the need for a closed session. However, once that determination is made by the legislative body, judicial review should be limited to whether the appropriate findings were made on appropriate facts. To wit, if the agency attorney advised a closed session and the litigation qualifies under the appropriate test, a court should uphold the conclusion without second-guessing the legislative decision.

9. Reportable is the floor

The Brown Act provides a list of specific actions that must be reported in public. The report includes both the action taken and how each member voted. Tahere are plenty of points of discussion, direction to negotiators, requests for information, and intermediary decisions that should not be reported in order to maintain the integrity of the closed session matter. That said, there also are plenty of circumstances where more information than required by the statute will not adversely impact the agency's handling of a closed session matter but will aid in reinforcing public confidence. For example, if the city manager is up for a raise made controversial because of budget restraints or performance complaints, at the end of a closed session involving a conference with the labor negotiator, it may be prudent to explain the rules. Here is an example:

> "As announced at the outset of this meeting, the city council met in closed session tonight to confer with its labor negotiator involving the terms of the city manager's contract, including salary. I want to mention for the public's benefit that the city manager is not permitted in the closed session during those discussions and was not in the closed session for that item. No reportable action was taken in the closed session on that item. Again for the public's benefit, let me add that, in order to take action, the matter will be on an open session agenda and the public will be afforded an opportunity to comment."

Using closed session announcements to restate the rules of closed session will convey to the skeptical resident that there are rules, that you know the rules, and that someone (city attorney!) is looking out for the public.

10. Confidentiality

Some councils/boards leak and others do not. Unauthorized disclosure of confidential information obtained in a closed session is a violation of the Brown Act and the Act contains remedies (injunctions, referral to grand jury) and exceptions (whistleblowing). Gov't Code §54963. The Brown Act's provisions are meant to deter all leaks and to address any specific leak. For agency attorneys, the thornier issue is managing a leaky ship. Often members have a "kitchen cabinet" (an informal group of confidants with whom ideas are vetted) and sometimes it is difficult to convince such members that the confidentiality rules really extend to their trusted allies. Sometimes the manager or head of HR has close relationships with other employees or commissioners and they gossip in a way they would describe as discrete and inconsequential. Some councils/boards are sharply divided and members may be on the active hunt for things that would embarrass their colleagues, whether in open session, outside a meeting, or in closed session. In those and the myriad of permutations of these situations, the agency attorney should think through practices that best serve her client, *the agency itself*.

Does it make sense to distribute closed session materials by email? Or in advance at all? Should closed session materials be collected at the end of the closed session? Are members using electronic devises in closed session and is the agency attorney able to address that matter? Is the matter something that could just as well be discussed in open session (and eliminate the issue altogether)?

The confidentiality of closed session is important. An excellent way to preserve confidentiality is to favor open session over closed and restate at the outset — in public or just for the agency's benefit in closed session — the limited purpose for the closed session and the reason that the exception to the law is permitted.

The session will include a practical application of the Brown Act's rules on closed session. You may find these *pro tips* handy. And now you are ready to provide legal counsel to the Dysfunction Junction City Council. Here is today's meeting agenda:

AGENDA
IRREGULAR MEETING
CITY COUNCIL
CITY OF DYSFUNCTION JUNCTION
NOVEMBER 15, 2023 9:30PM
COUNCIL CHAMBERS, CITY HALL

To the members of the City Council of the City of Dysfunction Junction:

NOTICE IS HEREBY GIVEN that the Mayor has called a Special Meeting of the City Council of the City of Dysfunction Junction to be held at City Hall, Dysfunction Junction, California, at 9:30 a.m. on Wednesday, November 15, 2023, for the purpose of considering an ordinance regulating e-bikes and convening a closed session.

1. CALL TO ORDER (Mayor)

2. ROLL CALL

3. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA BUT WITHIN THE CITY'S SUBJECT MATTER JURISDICTION

4. PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE TO REGULATE E-BIKE RIDERS UNDER 16 YEARS OLD

5. PUBLIC COMMENT ON CLOSED SESSION ITEMS

6. CLOSED SESSION AGENDA

   A. EMPLOYEE PERFORMANCE EVALUATION
      Title: City Manager

   B. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

   C. CONFERENCE WITH LABOR NEGOTIATORS
      Agency designated representative: City Attorney or her designee

Employee organization:: all of them

D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: APN No. 33-426-010
Agency negotiator: Dudley Doright, Mounties Realty
Negotiating parties: Snidely Whiplash
Under Negotiation: Price & Terms of Payment

E. CONFERENCE WITH LEGAL COUNCIL — EXISTING LITIGATION
Pursuant to Government Code 54956.9(d)(1)
Disgruntled Residents of Dysfunction Junction v. City of Dysfunction Junction
LACSC Case No. BS2018

F. CONFERENCE WITH LEGAL COUNCIL — ANTICIPATED LITIGATION

7. RECONVENE IN OPEN SESSION

8. CLOSED SESSION ANNOUNCEMENTS

9. ADJOURNMENT

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SUMMARY OF THE MAJOR PROVISIONS AND REQUIREMENTS OF THE RALPH M. BROWN ACT

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952).

Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.

The Brown Act does not apply to *ad hoc* committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these ad hoc committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, ad hoc committees would generally serve only

a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed.

Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply.

The governing boards of private entities are subject to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in councilmembers.

B. Meetings

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act definition of the term "meeting" (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes:

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

In plain English, this means that a meeting is any gathering of a majority of members to hear *or* discuss any item of city business or potential city business.

There are six specific types of gatherings that are *not* subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and *merely listen* to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

1. The individual contact exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a "serial meeting" in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a "serial meeting" follows below.

2. The seminar and conference exception

The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

3. The community meeting exception

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be "open and publicized." Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

4. The other legislative body exception

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

5. The social or ceremonial occasion exception

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided

that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

6. The standing committee exception

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no "meeting." If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as “observers” (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dais or otherwise participate in the standing committee's meeting.

With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, to attend a meeting with another legislative body in that other body's jurisdiction, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements.

“Teleconferencing” may be used as a method for conducting meetings whereby members of the body may be counted towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements.

As a result of the COVID-19 pandemic, the California Legislature previously passed AB 361 to allow for streamlined teleconferencing under the Brown Act during times of local emergency. Over time, public agencies and the general public have become more comfortable with fewer teleconferencing rules and restrictions. However, AB 361

could only be used when the Governor had declared a State of Emergency, or state or local officials recommended measures to promote social distancing, and the local agency makes certain findings every 30 days. AB 361 was set to expire at the end of 2023. However, the Legislature recently passed AB 557, which will take effect January 1, 2024 and expires by its own terms on January 1, 2026. AB 557 incorporates two main updates to the existing relaxed teleconference meeting rules established by AB 361:

1. The fact that state or local officials have imposed or recommended measures to promote social distancing is no longer a basis for holding "relaxed" teleconference meetings (i.e., without needing to post agendas at all teleconference locations, identify each teleconference location on the agenda, and ensure a quorum of the body participates from within the agency's jurisdiction), as was the case under AB 361. Remote meetings *are* still authorized in situations where the Governor has proclaimed a state of emergency and the legislative body is meeting via teleconference during that emergency, either to make an initial determination on whether meeting in person presents imminent risks to health or safety, or where the body has already determined by a majority vote that such risks are present.

2. The agency's governing body may now renew its findings in support of continued teleconference meetings under the relaxed requirements every 45 days (AB 361 required the findings to be remade every 30 days). This is intended to provide some relief for agencies that may not hold regular meetings every 30 days, but meet on a less frequent basis.

Public agencies also have the option to hold teleconference meetings under AB 2449, which provides a separate, but limited, teleconferencing option. (Section 54953(f).) Subject to a number of requirements further described below, a legislative body may hold a hybrid meeting without having to comply with the standard Brown Act teleconference rules under certain circumstances. These circumstances are:

1. **Just Cause**. One or more members of the legislative body (but less than a quorum) have notified the body at the earliest opportunity of their need to participate remotely for just cause. Just cause is restricted to: (1) childcare or caregiving need for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires remote participation; (2) contagious illness that prevents in-person attendance; (3) physical or mental disability need; (4) travel while on official business of the agency or another state or local agency; or (5) an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely (this justification was added by AB 557). The legislative body member must notify the legislative body at the

earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the meeting.

2. **Emergency Circumstance**. One or more members of the legislative body (but less than a quorum) experience an "emergency circumstance," which is defined as a physical or family medical emergency that prevents in-person attendance, and requests to participate remotely. As part of their request, the member must provide a general description of the circumstances relating to their need to appear remotely; however, they are not required to disclose a medical diagnosis, disability or other confidential medical information. The legislative body must then take action on each member's request. The member must make their request to participate remotely as soon as possible, and must make a separate request for each meeting in which they seek to participate remotely. If the request does not allow sufficient time to be placed on the posted agenda for the meeting for which the request is made, the legislative body may take action on it at the beginning of the meeting.

In order for a member of the legislative body to use AB 2449, the following requirements must be met:

1. Physical Location. A quorum must participate from a single physical location within the agency's jurisdiction.
2. Video. The meeting must have either two-way video (e.g., Zoom) or telephone with live webcasting
3. Notice/Participation. Agenda must show how the public virtually participates
4. Public Comments. Must allow during meeting; cannot limit to advanced comments.
5. Technical Difficulties. Must stop meeting if on agency's end

There are also limitations on the number of times a member may use AB 2449 to participate remotely. Specifically, a member may not participate remotely for "just cause" for more than two meetings in a calendar year and, in general, may not use AB 2449 to participate remotely for more than three consecutive months or 20% of the regular meetings for the local agency within a calendar year (or more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year).

All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. (Section 54953(c)(2)).

C. Serial Meetings

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a "serial meeting" (Section 54952.2(b)).

Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority ("I've talked to Councilmembers A and B and they will vote 'yes.' Will you?") or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter.

We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply **only** when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.

1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing:

a. Individual briefings of a majority of members of a legislative body should be "unidirectional," in that information should flow from staff to the member and the member's participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff

to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting.

b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known.

c. Staff may present its viewpoint to the member, but should not ask for the member's views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents' unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations:

a. First, state the ground rules “up front.” Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: “State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind.”

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no “meeting” has occurred. There is, however, always the risk that one participant

in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

To avoid discussing, deliberating, or taking action by way of emails and text messages, please consider the following guidelines:

a. Do not send emails or text messages to the whole Brown Act body.

b. Refrain from clicking "reply all" in response to your email communication.

c. Ask the city clerk or city manager to forward the informational items to other members of the Brown Act body.

4. Use of Social Media

Social media platforms, such as Twitter, Facebook, Instagram, etc., allow members of Brown Act bodies to share information, which may include information relating to the Brown Act body's business. If a majority of members of a Brown Act body are all "friends" on Facebook or follow each other on Twitter, those platforms could constitute an illegal serial meeting if business the topic of social media posts.

The Brown Act was recently amended to cover social media activity on platforms such as Snapchat, Instagram, Facebook, Twitter, TikTok, Reddit, and blogs. The law allows public officials to communicate on such platforms to answer questions from the public and provide information to the public. They may also solicit information regarding matters being considered by the body, or that fall within the official's jurisdiction.

However, the law prohibits members of a Brown Act body from using social media to discuss official business "among themselves," which is defined as making posts, commenting and using digital icons that express reactions to communications made by other members of the Brown Act body.

The law goes further. While a single contact between one public official and another would not generally constitute a prohibited meeting, under the Brown Act's social media restrictions even contact between two members (less than a quorum) is prohibited.

The Brown Act prohibits members of a Brown Act body from responding "directly to any communication" that is made, posted or shared on social media by another member of the same body regarding matters in the body's jurisdiction.

To avoid discussing, deliberating, or taking action by way of social media, please consider the following guidelines:

a. Keep the information general about upcoming matters before your Brown Act body on social media – encouraging participation in noticed meetings is a good use of social media but using social media as an alternative to noticed public meetings runs afoul of the goal of the Brown Act.

b. Do not enter a group page or chat for the members of your Brown Act body.

c. Do not contribute content that expresses your position regarding upcoming Brown Act body business on the City's social media page. This is more of a concern for administrative or "quasi-judicial" actions (like planning applications or business licenses).

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These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.

D. Notice and Agenda Requirements

Two key provisions of the Brown Act that ensure that the public's business is conducted openly are the requirements that legislative bodies post agendas prior to their meetings (Sections 54954.2, 54955 and 54956) and that no action or discussion may occur on items or subjects not listed on the posted agenda (Section 54954.2(a)(2)). Limited exceptions to the rule against discussing or taking action on an item not on a posted agenda are discussed below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings (Section 54954(a)). Meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting (Section 54954.2(a)). The description need not exceed 20 words. Each agenda must be posted in a place that is freely accessible to the public and must be posted on the agency's website, if it has one. After January 1, 2019, additional online posting requirements apply. Agenda posting requirements differ depending on the type of meeting to be conducted.

If the meeting is a "regular meeting" of the legislative body (i.e., occurs on the body's regular meeting day, without a special meeting call), the agenda must be posted 72 hours in advance of the meeting (Section 54954.2(a)). For "special meetings," the "call" of the meeting and the agenda (which are typically one and the same) must be posted at least 24 hours prior to the meeting (Section 54956). Each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as fax, electronic mail or U.S. mail) at

least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and if they have, that notice must be given at the same time notice is provided to members of the legislative body. A special meeting may not be held to discuss salaries, salary schedules or compensation paid in the form of fringe benefits of a local agency "executive" as defined in Government Code section 3511(d). However, the budget may be discussed in a special meeting. Section 54956(b).

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned (Section 54955). If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting (Section 54954.2(b)(3)).

The Brown Act requires the local agency to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. The agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting (Section 54954.1).

If materials pertaining to a meeting are distributed less than 72 hours before the meeting, they must be made available to the public as soon as they are distributed to the members of the legislative body. Further, the agenda for every meeting of a legislative body must state where a person may obtain copies of materials pertaining to an agenda item delivered to the legislative body within 72 hours of the meeting. (Section 54957.5).

A legislative body that has convened a meeting and whose membership is a quorum of another legislative body (for example, a city council that also serves as the governing board of a housing authority) may convene a meeting of that other legislative body, concurrently or in serial order, only after an oral announcement of the amount of compensation or stipend, if any, that each member will receive as a result of convening the second body. No announcement need be made if the compensation is set by statute or if no additional compensation is paid to the members. (Section 54952.3(a)).

E. Public Participation

1. Regular Meetings

The Brown Act mandates that agendas for regular meetings allow for two types of public comment periods. The first is a general audience comment period, which is the part of the meeting where the public can comment on any item of interest that is

within the subject matter jurisdiction of the local agency. This general audience comment period may come at any time during a meeting (Section 54954.3).

The second type of public comment period is the specific comment period pertaining to items on the agenda. The Brown Act requires the legislative body to allow these specific comment periods on agenda items to occur prior to or during the City Council's consideration of that item (Section 54954.3).

Some public entities accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on agenda and non-agenda items. Other public entities provide public comment periods as each item or group of items comes up on the agenda, and then leave the general public comment period to the end of the agenda. Either method is permissible, though public comment on *public hearing* items must be taken during the hearing. Caution should also be taken with consent calendars. The body should have a public comment period for consent calendar items before the body acts on the consent calendar, unless it permits members of the audience to "pull" items from the calendar.

The Brown Act allows a body to preclude public comments on an agenda item in one situation, where the item was considered by a committee of the body which held a meeting where public comments on that item were allowed. So, if the body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on items on that committee's agenda) and the committee has previously considered an item, then at the time the item comes before the full body, the body may choose not to take additional public comments on that item. However, if the version presented to the body is different from the version presented to, and considered by, the committee, the public must be given another opportunity to speak on that item at the meeting of the full body (Section 54954.3).

2. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the body concerning any item listed on the agenda prior to the body's consideration of that item (Section 54954.3). Unlike regular meetings, in a special meeting the body does not have to allow public comment on any non-agenda matter.

3. Limitations on the Length and Content of the Public's Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. For example, typical time limits restrict speakers to three or five minutes. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance (Section 54954.3(b)). However, we do not recommend setting total time limits per item for any

quasi-judicial matter such as a land use application or business license or permit application hearing. Application of a total time limit to a quasi-judicial matter could result in a violation of the due process rights of those who were not able to speak to the body during the time allotted.

The Act precludes the body from prohibiting public criticism of the policies, procedures, programs, or services of the agency or the acts or omissions of the city council (Section 54954.3 (c)). This does not mean that a member of the public may say anything. If the topic of the public's comments is not within the subject matter jurisdiction of the agency, the member of the public can be cut off.

The body also may adopt reasonable rules of decorum for its meetings which preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of public meetings. The presiding officer may remove a disruptive person under certain circumstances and after warnings are given.

Also, the right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the speech rights of speakers by suppressing opinions relevant to the business of the body.

The use of profanity may be a basis for stopping a speaker. However, it will depend upon what profane words or comments are made and the context of those comments in determining whether it rises to the level of impeding the orderly conduct of a meeting. While terms such as “damn” and “hell” may have been disrupting words thirty years ago, today's standards seem to accept a stronger range of foul language. Therefore, if the chair is going to rule someone out of order for profanity, the chair should make sure the language is truly objectionable *and* that it causes a disturbance or disruption in the proceeding before the chair cuts off the speaker.

4. Discussion of Non-Agenda Items

A body may not *take action or discuss* any item that does not appear on the posted agenda (Section 54954.2).

There are two exceptions to this rule. The first is if the body determines by majority vote that an emergency situation exists. The term “emergency” is limited to work stoppages or crippling disasters (Section 54956.5). The second exception is if the body finds by a two-thirds vote of those present, or if less than two-thirds of the body is present, by unanimous vote, that there is a need to take immediate action on an item and the need for action came to the attention of the local agency subsequent to the posting of the agenda (Section 54954.2 (b)). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required.

In addition to these exceptions, there are several *limited* exceptions to the no discussion on non-agenda items rule. Those exceptions are:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;

- Members or staff may ask questions for clarification and provide a reference to staff or other resources for factual information;

- Members or staff may make a brief announcement, ask a question or make a brief report on his or her own activities;

- Members may, subject to the procedural rules of the legislative body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and

- The legislative body may itself as a body, subject to the rules of procedures of the legislative body, take action to direct staff to place a matter of business on a future agenda.

The body may not discuss non-agenda items to any significant degree under these exceptions. The comments *must* be brief. These exceptions do not allow long or wide-ranging question and answer sessions between the public and city council or between legislative body and staff.

When the body is considering whether to direct staff to add an item to a subsequent agenda, these exceptions do not allow the body to discuss the merits of the matter or to engage in a debate about the underlying issue.

To protect the body from problems in this area, legislative bodies may wish to adopt a rule that any one member may request an item to be placed on a subsequent agenda, so that discussion of the merits of the issue can be easily avoided. If the legislative body does not wish to adopt this rule, then the body's consideration and vote on the matter must take place with virtually no discussion.

It is important to follow these exceptions carefully and interpret them narrowly because the city would not want to have an important and complex action tainted by a non-agendized discussion of the item.

5. The public's right to photograph, videotape, tape-record and broadcast open meetings

The public has the right to videotape or broadcast a public meeting or to make a motion picture or still camera record of such meeting (Section 54953.5). However, a body may prohibit or limit recording of a meeting if the body finds that the recording cannot continue without noise, illumination, or obstruction of a view that

constitutes, or would constitute, a disruption of the proceedings (Section 54953.5). These grounds would appear to preclude a finding based on nonphysical grounds such as breach of decorum or mental disturbance.

Any audio or video tape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the city is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. The city must not destroy the tape or film record of the open and public meeting for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the city (Section 54953.5).

If a member of the public requests a duplicate of the audio or videotape, the city must provide such copy. If the city has an audiotape or videotape duplication machine, the city must provide the copy on its own machine. If the city does not have such a machine, the city must send it out to a business that can make a copy. The city may charge a fee to cover the cost of duplication.

The Brown Act requires written material distributed to a majority of the body by *any person* to be provided to the public without delay. If the material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting (Section 54957.5).

One problem in applying this rule arises when written materials are distributed directly to a majority of the body without knowledge of City staff, or even without the members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the body to ensure that staff gets a copy of the document so that copies can be made for the city's records and for members of the public who request a copy.

F. Closed Sessions

The Brown Act allows a legislative body during a meeting to convene a closed session in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," a holdover term from the Brown Act's early days. Examples of business which may be conducted in closed session include personnel evaluations or labor negotiations, pending litigation, and real estate negotiations (See Sections 54956.7 through 54957 and Sections 54957.6 and 54957.8). Political sensitivity of an item is <u>not</u> a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. And, there is a "bonus" of sorts for using prescribed language to describe litigation closed sessions in that legal challenges to the adequacy of the description are precluded (Section 54954.5). This so-called "safe harbor" encourages cities to use a very

similar agenda format. The legislative body must identify the City's negotiator in open session before going into closed session to discuss either real estate negotiations or labor negotiations.

The legislative body must reconvene the public meeting after a closed session and publicly report specified closed session actions and the vote taken on those actions (Section 54957.1). There are limited exceptions for certain kinds of litigation decisions, and to protect the victims of sexual misconduct or child abuse.

Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends (Section 54957.1).

The Brown Act also includes detailed requirements describing when litigation is considered "pending" for the purposes of a closed session (Section 54956.9). These requirements involve detailed factual determinations that will probably be made in the first instance by the City Attorney.

Roberts v. City of Palmdale, 5 Cal.4th 363 (1993), a California Supreme case, affirms the confidentiality of attorney-client memoranda. See also Section 54956.9(b)(3)(F) with respect to privileged communications regarding pending litigation.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

One perennial area of confusion is whether a body may discuss salary and benefits of an individual employee (such as a city manager) as part of an evaluation session under Section 54957. It may not. However, the body may designate a negotiator to negotiate with that employee and meet with its negotiator in closed session under Section 54957.6 to provide directions. The employee in question may not be present in such a closed session.

G. Enforcement

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, and orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body (Section 54960.1). The provision relating to efforts to penalize expression may come up in the context of measures by the legislative body to censure or penalize one of its members for breaching confidentiality or other violations. This area of law is charged with difficult free

speech and attorney-client privilege issues. The tape recording of closed sessions is not required unless the court orders such taping after finding a closed session violation (Section 54960).

Prior to filing suit to invalidate an action taken in violation of the Brown Act, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken in open session unless the violation involves the agenda requirements under Section 54954.2, in which case the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. A suit must be filed by the complaining party within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires.

Any person may also seek declaratory and injunctive relief to find a past practice of a legislative body to constitute a violation of the Brown Act (Section 54960). In order to do so, the person must first send a "cease and desist" letter to the local agency, requesting that the practice cease. If the agency replies within a designated time, and disavows the practice, no lawsuit may be initiated. However, if the agency fails to reply or declares its intent to continue the practice, the lawsuit seeking to declare the practice a violation of the Brown Act may be filed, and attorney fees will be granted in the event the practice is found to violate the Act.

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under the Brown Act (Section 54959). This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

Under Section 54963, it is a violation of the Brown Act for any person to disclose confidential information acquired in a closed session. This section enumerates several nonexclusive remedies available to punish persons making such disclosures and to prevent future disclosures.

H. Conclusion

The Brown Act contains many rules and some ambiguities; it can be confusing and compliance can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your City Attorney.

AGENDA
IRREGULAR MEETING
CITY COUNCIL
CITY OF DYSFUNCTION JUNCTION
NOVEMBER 15, 2023 9:30PM
COUNCIL CHAMBERS, CITY HALL

To the members of the City Council of the City of Dysfunction Junction:
NOTICE IS HEREBY GIVEN that the Mayor has called a Special Meeting of the City Council of the City of Dysfunction Junction to be held at City Hall, Dysfunction Junction, California, at 9:30 a.m. on Wednesday, November 15, 2023, for the purpose of considering an ordinance regulating e-bikes and convening a closed session.

1. CALL TO ORDER (Mayor)

2. ROLL CALL

3. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA BUT WITHIN THE CITY'S SUBJECT MATTER JURISDICTION

4. PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE TO REGULATE E-BIKE RIDERS UNDER AGE 16

5. PUBLIC COMMENT ON CLOSED SESSION ITEMS

6. CLOSED SESSION AGENDA
   A. EMPLOYEE PERFORMANCE EVALUATION
      Title: City Manager
   B. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
   C. CONFERENCE WITH LABOR NEGOTIATORS
      Agency designated representative: City Attorney or her designee
      Employee organization:: all of them
   D. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
      Property: APN No. 33-426-010
      Agency negotiator: Dudley Doright, Mounties Realty
      Negotiating parties: Snidely Whiplash
      Under Negotiation: Price & Terms of Payment
   E. CONFERENCE WITH LEGAL COUNCIL — EXISTING LITIGATION Pursuant to Government Code 54956.9(d)(1)
      Disgruntled Residents of Dysfunction Junction v. City of Dysfunction Junction LACSC Case No. BS2018
   F. CONFERENCE WITH LEGAL COUNCIL — ANTICIPATED LITIGATION

7. RECONVENE IN OPEN SESSION
8. CLOSED SESSION ANNOUNCEMENTS
9. ADJOURNMENT