



## VENTURA PORT DISTRICT BOARD OF PORT COMMISSIONERS

Chris Stephens, Chairman  
Brian Brennan, Vice Chairman  
Jackie Gardina, Secretary  
Everard Ashworth, Commissioner  
Michael Blumenberg, Commissioner

Brian D. Pendleton, General Manager  
Todd Mitchell, Business Operations Manager  
Andy Turner, Legal Counsel  
Jessica Rauch, Clerk of the Board

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### PORT COMMISSION AGENDA REGULAR MEETING MARCH 18, 2020 VENTURA PORT DISTRICT OFFICE 1603 ANCHORS WAY DRIVE VENTURA, CA 93001

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| <b>CLOSED SESSION – 5:30PM</b> |
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**CALL TO ORDER:** *By Chairman Chris Stephens.*

**ROLL CALL:** *By the Clerk of the Board.*

**PUBLIC COMMUNICATIONS (3 minutes)**

*The Public Communications period is set aside to allow public testimony on items only on the Closed Session Agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.*

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| <b>CONVENE IN CLOSED SESSION – 5:35PM</b> |
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**CLOSED SESSION AGENDA (1 hour 25 minutes)**

*See Attachment to Agenda-Closed Session Conference with Legal Counsel.*

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| <b>OPEN SESSION – 7:00PM</b> |
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**CALL TO ORDER:** *By Chairman Chris Stephens.*

**PLEDGE OF ALLEGIANCE:** *By Chairman Chris Stephens.*

**ROLL CALL:** *By the Clerk of the Board.*

**ADOPTION OF AGENDA (3 minutes)**

*Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to, or removed/continued from the Port Commission's agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet*

are available for public review at the Port District's office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District's website - [www.venturaharbor.com](http://www.venturaharbor.com). Each item on the agenda shall be deemed to include action by an appropriate motion, resolution or ordinance to take action on any item.

**APPROVAL OF MINUTES (3 minutes)**

*The Minutes of the March 4, 2020 Regular Meeting will be considered for approval.*

**PUBLIC COMMUNICATIONS (3 minutes)**

*The Public Communications period is set aside to allow public testimony on items not on today's agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.*

**CLOSED SESSION REPORT (3 minutes)**

*Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.*

**BOARD COMMUNICATIONS (5 minutes)**

*Port Commissioner's may present brief reports on port issues, such as seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole. Port Commissioner's must provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.*

**STAFF AND GENERAL MANAGER REPORTS (5 minutes)**

*Ventura Port District Staff and General Manager will give the Commission updates on important topics or items of general interest if needed.*

**LEGAL COUNSEL REPORT (5 minutes)**

*Legal Counsel will report on progress of District assignments and any legislative or judicial matters.*

**CONSENT AGENDA: (5 minutes)**

*Matters appearing on the Consent Calendar are expected to be non-controversial and will be acted upon by the Board at one time, without discussion, unless a member of the Board or the public requests an opportunity to address any given item. Approval by the Board of Consent Items means that the recommendation is approved along with the terms set forth in the applicable staff reports.*

**A) Approval of Out of Town Travel Requests**

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve the out of town travel requests for:

- a) Senior Harbor Patrolman, Pat Hummer to attend the 3<sup>rd</sup> Annual California Boating Congress in Sacramento, California.

**STANDARD AGENDA:**

**1) Brown Act Presentation**

Recommended Action: Informational.

That the Board of Port Commissioners receive a presentation from Lagerlof Lawyers, general legal counsel to the Ventura Port District, on the Ralph M. Brown Act.

## **2) City of Ventura Proposal to Ban Styrofoam**

Recommended Action: Informational.

That the Board of Port Commissioners receive a status report on the City of Ventura's direction to prepare an ordinance banning the use of Expanded Polystyrene (EPS) commonly called Styrofoam and campaign to reduce single-use plastics.

## **ADJOURNMENT**

*This agenda was posted on Friday, March 13, 2020 by 5:00 p.m. at the Port District Office  
and online at [www.venturaharbor.com](http://www.venturaharbor.com) - Port District Business - Meetings and Agendas.*

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*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Ventura Port District at (805) 642-8538. Notification 48 hours before the meeting will enable the District to make reasonable arrangements to ensure accessibility. (28 CFR 35.102.35.104 ADA Title II)*

**ATTACHMENT TO PORT COMMISSION AGENDA  
CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL**

**WEDNESDAY, MARCH 18, 2020**

**1. Conference with Real Property Negotiators - Per Government Code Section 54956.8:**

- a) Property: **Federal Authorized Sea Bottom**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
Army Corps of Engineers  
Under Negotiation: **Sea Bottom Aquaculture Master Permit** (Verbal Report)
- b) Property: **1567 Spinnaker Drive #100**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
Tristan Thames, Makis and Lynn Mikelatos, Marilyn Ryemon, and  
Under Negotiation: Annette Cortez dba Jack Axe & Ale  
**New Restaurant, Retail and Entertainment Lease Agreement**
- c) Property: **1559 Spinnaker Drive #205, 205A, B, C, D, E, 210**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
Andy Randy, LLC dba Ventura Harbor Comedy Club  
Under Negotiation: **Retail Lease Agreement**
- d) Property: **1575 Spinnaker Drive #101, 102, 103**  
Negotiating Parties: Brian Pendleton, Todd Mitchell, Andy Turner  
Andres Fernandez, LLC dba The 805  
Under Negotiation: **Restaurant Lease Agreement** (Verbal Report)

**2. Conference with Legal Counsel - Potential Litigation per Government Code Section 54956.9(d)(2): Two (2) Cases. (Verbal Reports)**





VENTURA  
PORT DISTRICT  
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# BOARD OF PORT COMMISSIONERS

## MARCH 18, 2020

### APPROVAL OF MINUTES

## MARCH 4, 2020

# VENTURA PORT DISTRICT

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## BOARD OF PORT COMMISSIONERS MINUTES OF MARCH 4, 2020

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### **CLOSED SESSION**

#### **CALL TO ORDER:**

The Ventura Board of Port Commissioners Regular Closed Session Meeting was called to order by Chairman Chris Stephens at 5:32PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001.

#### **ROLL CALL:**

#### **Commissioners Present:**

Chris Stephens, Chairman  
Jackie Gardina, Secretary  
Everard Ashworth via telephone  
Michael Blumenberg

#### **Commissioners Absent:**

Brian Brennan, Vice Chairman

#### **Port District Staff:**

Brian Pendleton, General Manager  
Jessica Rauch, Clerk of the Board

#### **Legal Counsel:**

Andy Turner  
Elsa Sham

**PUBLIC COMMUNICATIONS:** None.

**CONVENED TO CLOSED SESSION AT 5:33PM.**

**ADJOURNMENT:** Closed Session was adjourned at 6:58PM.

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### **OPEN SESSION**

#### **ADMINISTRATIVE AGENDA:**

#### **CALL TO ORDER:**

The Ventura Board of Port Commissioners Regular Open Session Meeting was called to order by Chairman Chris Stephens at 7:03PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001.

**PLEDGE OF ALLEGIANCE:** By Harbormaster, John Higgins.

**ROLL CALL:**

**Commissioners Present:**

Chris Stephens, Chairman  
Jackie Gardina, Secretary  
Everard Ashworth (arrived at 7:29pm)  
Michael Blumenberg

**Commissioners Absent:**

Brian Brennan, Vice Chairman

**Port District Staff:**

Brian Pendleton, General Manager  
John Higgins, Harbormaster  
Robin Baer, Property Manager  
Jessica Rauch, Clerk of the Board

**Legal Counsel:**

Andy Turner  
Elsa Sham

**ADOPTION OF AGENDA**

**ACTION:** Commissioner Blumenberg moved, seconded by Commissioner Gardina and carried by a vote of 3-0 (Brennan/Ashworth absent) to adopt the March 4, 2020 agenda.

**APPROVAL OF MINUTES**

The Minutes of the February 18, 2019 Regular Meeting were considered as follows:

**ACTION:** Commissioner Gardina moved, seconded by Commissioner Blumenberg and carried by a vote of 3-0 (Brennan/Ashworth absent) to approve the February 18, 2019 Regular Meeting Minutes.

**PUBLIC COMMUNICATIONS:** Sam Sadove, owner of Ventura Harbor Marina and Yacht Yard spoke on behalf of Lynn Mikelatos, owner of Margarita Villa and The Greek asking if she could know how many proposals were submitted for the 1567 Spinnaker Drive #100 Request for Proposals.

**CLOSED SESSION REPORT:** Mr. Turner stated that the Board met in closed session; discussed and reviewed all items under No. 1 and two items under No. 2 on the closed session agenda. Staff was given instructions on how to proceed as appropriate on these matters and there was no action taken that is reportable under The Brown Act. The Board will reconvene after open session to finish the last item under No. 2.

**BOARD COMMUNICATIONS:** Commissioner Blumenberg and Stephens both reported that they had a nice tour of the barge. Commissioner Gardina attended the first tenant appreciation event. She was pleased to see how many women owned businesses there are in the Village and family legacy businesses as well.

**STAFF COMMUNICATIONS:** Mr. Pendleton reported that Vice Chairman Brennan, Mr. Mitchell and Mr. Parsons are currently at CMANC in Washington DC. He also followed up on Commissioner Gardina's Board Communication by commenting that the District does recommend the Women's Economic Venture and other organizations to new businesses interested in the Harbor. Mr. Pendleton announced that it is the Channel Islands National Park 40<sup>th</sup> Anniversary. He also reported that staff met with Mr. Sadove on his rate increases, which will be published on March 8<sup>th</sup> and be presented to the Board on April 15<sup>th</sup>.

**LEGAL COUNSEL REPORT:** None.

**CONSENT AGENDA:**

**A) Approval of Out of Town Travel Requests**

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve the out of town travel requests for:

- A) General Manager, Brian Pendleton to travel to Vancouver, WA to attend the Pacific Fishery Management Council's Habitat Committee meeting and regular Council meeting on two separate dates;
- B) Business Operations Manager, Todd Mitchell to travel to San Diego, CA to attend the American Society of Civil Engineers: Coasts Oceans Ports Rivers Institute (COPRI) Ports and Harbors Committee meetings;
- C) General Manager, Brian Pendleton to travel to Sacramento, CA to attend legislative hearings on AB 2370; and
- D) One Commissioner to travel to Sacramento, CA to attend legislative hearings on AB 2370.

**ACTION:** Commissioner Gardina moved, seconded by Commissioner Blumenberg and carried by a vote of 3-0 (Brennan/Ashworth absent) to approve the out of town travel requests for General Manager, Brian Pendleton to travel to Vancouver, WA to attend the Pacific Fishery Management Council's Habitat Committee meeting and regular Council meeting on two separate dates; Business Operations Manager, Todd Mitchell to travel to San Diego, CA to attend the American Society of Civil Engineers: Coasts Oceans Ports Rivers Institute (COPRI) Ports and Harbors Committee meetings; General Manager, Brian Pendleton to travel to Sacramento, CA to attend legislative hearings on AB 2370; and one Commissioner to travel to Sacramento, CA to attend legislative hearings on AB 2370.

**B) Approval of a Professional Services Agreement with Carpi & Clay Inc.**

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve a Professional Services Agreement with Carpi & Clay, Inc. in the amount of \$30,000 to provide the District with Federal Advocacy Services from January 1, 2020 to June 30, 2020.

**ACTION:** Commissioner Gardina moved, seconded by Commissioner Blumenberg and carried by a vote of 3-0 (Brennan/Ashworth absent) to approve a Professional Services Agreement with Carpi & Clay, Inc. in the amount of \$30,000 to provide the District with Federal Advocacy Services from January 1, 2020 to June 30, 2020.

**C) Approval of a New Restaurant Lease Agreement for Kelly Shirk dba Sugar Lab Bake Shop, LLC**

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve a new Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Kelly Shirk dba Sugar Lab Bake Shop, LLC for the premises located at 1575 Spinnaker Drive #105 A/B consisting of a total of 1,330 square feet for a three (3) year term with two separate three (3) year options.

**ACTION:** Commissioner Gardina moved, seconded by Commissioner Blumenberg and carried by a vote of 3-0 (Brennan/Ashworth absent) to approve a new Restaurant Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Kelly Shirk dba Sugar Lab Bake Shop, LLC for the premises located at 1575 Spinnaker Drive #105 A/B consisting of a total of 1,330 square feet for a three (3) year term with two separate three (3) year options.

**STANDARD AGENDA:**

**1) Approval of a New Professional Services Agreement with COWI for an Aquaculture Navigation Risk Assessment for the Ventura Shellfish Enterprise Project**

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve a Professional Services Agreement with COWI in an amount of \$64,040 to provide the District with an Aquaculture Navigation Risk Assessment for the Ventura Shellfish Enterprise Project.

Report by General Manager, Brian D. Pendleton.

Public Comment: Sam Sadove, owner of Ventura Harbor Marina and Yacht Yard asked if this assessment includes marine mammal navigation as well or if that is a separate study.

**ACTION:** Commissioner Blumenberg moved, seconded by Commissioner Gardina and carried by a vote of 4-0 (Brennan absent) to approve a Professional Services Agreement with COWI in an amount of \$64,040 to provide the District with an Aquaculture Navigation Risk Assessment for the Ventura Shellfish Enterprise Project.

**RECONVENED TO CLOSED SESSION AT 7:37PM.**

**RECONVENED TO OPEN SESSION AT 8:31PM**

**CLOSED SESSION REPORT:** Mr. Turner stated that the Board met in closed session and was briefed by counsel on the last remaining litigation matter under item 2 on the closed session agenda. As to this matter, staff and counsel were given instructions on how to proceed as appropriate and there was no reportable action taken under the Brown Act.

**ADJOURNMENT:** The meeting was adjourned at 8:32PM.

The next meeting is Wednesday, March 18, 2020.

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Jackie Gardina, Secretary



VENTURA  
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# BOARD OF PORT COMMISSIONERS MARCH 18, 2020

## DEPARTMENTAL STAFF REPORTS

DREDGING

FEDERAL

FACILITIES

HARBOR PATROL

MARINA

MARKETING

PROPERTY

**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: March 18, 2020

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TO: Board of Port Commissioners  
FROM: Richard Parsons, Project Manager  
SUBJECT: February/March 2020 Dredging/Special Projects

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**FY2021 FEDERAL DREDGING FUNDS**

The Administrations proposed FY2021 budget includes \$4,795,000 for the February/March 2021 maintenance dredging of Ventura Harbor. Based on our recent discussions in Washington D.C. with Congressional Offices, its expected that funds in that amount will be included in FY2021 Energy and Water Development Appropriations Bill ultimately approved by the Congress. The timing of that action is, however, unpredictable at this time, but could well be late this calendar year. Funding at that level for FY2021 coupled with \$1,625,000 in FY2020 work plan funds that could be carried over to FY2021 if necessary, will be adequate to assure a complete dredging of the Federal channel and sand trap in 2021.

**FY2020 CORPS OF ENGINEERS DREDGING**

The Corps contractor, Manson Construction Company completed the maintenance dredging of the Harbor's federal channel and sand trap on February 24, 2020. A total of 401,000 cubic yards of sandy material was removed and placed on the Surfers Knoll Beach at a cost to the US Army Corps of Engineers of \$3,525,000. The entrance channel and sand trap are now in excellent condition.

**INNER HARBOR DREDGING**

Unfortunately, we were unable to accomplish the maintenance dredging of the Pierpont Basin and stub channel while Manson Construction's dredging equipment was in the Harbor in February, available and under contract for that effort. The District's permits from the following agencies require that the Santa Clara River be flowing at 100 cubic feet per second and that the river mouth be open to the ocean for the deposition of fine-grained dredge material in the river mouth area to occur:

- U.S. Army Corps of Engineers
- California Coastal Commission
- Los Angeles Regional Water Quality Control Board

The river was only flowing at 94.9 cubic feet per second at the Victoria Avenue bridge and, more importantly from the perspective of the regulatory agencies, the river mouth was not open when Manson was available on February 24<sup>th</sup> to commence the dredging effort. Staff will return to the Board with a detailed report that provides further information about this issue and outlines a process to seek Amendments to the permits from the above listed agencies.

**COMMERCIAL DOCK REPLACEMENT PROJECT**

The 40 additional Eaton power pedestals that the District agreed to acquire for \$119,986 in change order No. 4 to Bellingham Marine Industries contract are now expected to be installed in April 2020.

**HARBOR PATROL GANGWAY REPLACEMENT**

Major Engineering Marine hopes to be able to install the replacement aluminum gangway at the Harbor Patrol dock in late March or early April when their barge mounted crane returns to the Harbor.

## President Releases Fiscal Year 2021 Budget Proposal

On February 10<sup>th</sup>, President Trump released his Fiscal Year 2021 (FY21) budget proposal. The \$4.8 trillion budget proposes billions of dollars in cuts to non-defense spending, different from the budget deal negotiated with Congressional leaders just last year. Under the plan, the federal deficit would shrink to \$966 billion in FY 2021 and to \$261 billion by 2030. Under current spending levels, the deficit is expected to be over \$1 trillion this year. Over half of the savings projected would come from the administration's proposed plan to cut mandatory spending through changes that could curb food stamp benefits, implement Medicaid work requirements and tackle improper health payments.

For the US Army Corps of Engineers (Corps), the President proposes a top line number of \$5.976 billion. This proposal is a sharp decrease from the record setting funding of \$7.7 billion the Corps received from Congress in the final FY20 appropriations bill. This is also not a surprise. Regardless of which party controls the White House, it is normal to see the President's budget proposal fall far short of what is actually needed for the Corps. It will be up to Congress, and specifically the House and Senate Energy & Water Appropriations Subcommittees, to address this shortfall over the course of the next several months. Within the President's FY21 budget for the Corps, he proposes the following:

- General Investigations: \$1.03M, a decrease of \$48M from enacted FY20
- Construction: \$2.22B, a decrease of \$461M from enacted FY20
- Operation & Maintenance: \$1.996B, a decrease of \$1.794B from enacted FY20

In an earmark free environment, the Corps budget proposal is one of the few places where we still see project level funding identified. Under the rules of the House and Senate, these project specific funding levels will be carried forth in the House and Senate bills for FY21. At the conclusion of this process, the annual Corps work plan provides an opportunity to address any project specific shortcomings. This includes providing additional funding for projects included in the budget proposal as well as adding in funding for projects left out of the budget. For the Ventura Harbor, the President's FY21 budget proposes \$4.795M for annual maintenance dredging. This is a good starting point and it allows us to work with your congressional delegation to support this funding during the FY21 appropriations process as well as to seek additional funding during the work plan process as appropriate. This is also significant as



funding for the Harbor was not included in the Administration's FY20 budget while it had been included in several previous and consecutive Administration budgets.

Additionally, the budget includes \$1 trillion in proposed infrastructure spending over ten years. This is further broken down to \$810 billion for reauthorization of highway/transit programs over ten years and \$190 billion in mandatory FY21 budget authority for other infrastructure (although much of it will go towards surface transportation programs).

A couple of important things to remember regarding the President's budget proposal:

- It is a proposal and an opportunity for the President to put forward his suggestions about how he would allocate federal funding for the year. Congress still maintains the power of the purse and will ultimately decide how to appropriate federal funds.
- Congress will not vote on the President's budget proposal.
- The cuts highlighted above in the FY21 budget proposal are very similar to the proposed cuts the President has suggested to these programs in previous budget proposals, which Congress has not only chosen to ignore, but in many cases, chooses to increase funding in these programs.
- Many Members of Congress on both sides of the aisle have expressed the desire to stick to the agreed upon spending levels for FY 2021.

## Corps Releases its FY20 Work Plan

With the conclusion of the FY20 appropriations bills at the end of calendar 2019, the Corps was given the official green light to start the FY20 work plan process. In the absence of earmarks, the work plan provides the vehicle for additional funding to be provided to projects included in the Administration's budget proposal and well as for new funding to be provided for projects not listed in the budget. The work plan was released on February 10, 2020 in concert with the release of the Administration's budget proposal for FY21. With the strong support of the Harbor's congressional delegation the Harbor was awarded \$1.625M.

## A Look Ahead: FY21 House Appropriations Schedule

The House Appropriations Committee has released a tentative markup schedule for the House Fiscal Year 2021 (FY21) appropriations process. The House aims to have all bills through subcommittee, full committee and approved on the House floor by July. It's an ambitious schedule, but the House followed a similar schedule with the FY20 bills. The congestion in the appropriations process typically comes in the fall when it's time for the House and Senate to conference and finalize their respective packages. As we have seen before, this often results in a continuing resolution (CR) or a series of CRs to bridge the gap between the start of FY21 on October 1st and whenever Congress and the White House agree on the final bills (most of the time just before Christmas).

Here is the current schedule for House Appropriations Committee:

- **April 21:** Agriculture, Commerce-Justice-Science and Legislative Branch subcommittees.
- **April 22:** State-Foreign Operations subcommittee.
- **April 27:** Homeland Security subcommittee.
- **April 28:** Commerce-Justice-Science and Legislative Branch full committees and adoption of subcommittee allocations for all 12 bills.
- **April 29:** Agriculture and State-Foreign Operations full committees and Defense and Labor-HHS-Education subcommittees.
- **April 30:** Energy-Water, Financial Services and Military Construction-VA subcommittees.
- **May 12:** Interior-Environment and Transportation-HUD subcommittees.
- **May 13:** Defense, Homeland Security and Labor-HHS-Education full committee.
- **May 14:** Energy-Water, Financial Services and Military Construction-VA full committees.
- **May 19:** Interior-Environment and Transportation-HUD full committees.

One final calendar note: since this is an election year, the Congressional calendar is even more condensed. Congress will take the traditional August recess and they also plan to be on the campaign trail all of October. It will very much be a hurry up and wait kind of year with all of the hurrying happening between now and August 1 and all of the waiting happening from August 1 to mid-December.

## Federal Agency Positions/Nominations

On February 27, President Trump formally nominated Diana Furchtgott-Roth, of Maryland, to be an Assistant Secretary of Transportation.

## Army Corps and Reclamation issue Joint Commitment to Addressing Water Infrastructure

The Army Corps of Engineers and the Bureau of Reclamation recently released *The State of the Infrastructure: A Joint Report by the Bureau of Reclamation and the U.S. Army Corps of Engineers*. The two agencies have a long history of collaboration to construct, operate and maintain the nation's crucial water-related infrastructure. Combined, the Army Corps and Reclamation oversee and manage more than 1,200 dams, 153 hydroelectric power plants, over 5,000 recreation areas, 25,000 miles of navigable waterways and tens of thousands of miles of canals and other water conveyance infrastructure. Those facilities provide enough water for 130 million people and irrigation for 10 million acres of farmland. And, combined hydroelectric power plants generate renewable electricity for 10 million homes.

The partnership between the Army Corps and Reclamation brings together a wide array of resources that serve to enrich public services as well as water resource management and environmental protection. The agencies regularly assess the health, safety and sufficiency of existing infrastructure and continually work to upgrade aging infrastructure and construct new projects to meet the needs of families, farms and communities.

## Army Corps of Engineers Names New Director of Civil Works

Al Lee was recently named to be the new Director of the U.S. Army Corps of Engineers (USACE) Civil Works Program. Lee comes directly from the Transatlantic Division where he served as Director of Programs and Regional Business. Prior to that assignment, he served as Programs Director for South Atlantic Division covering a large Civil Works region including three mega-projects; Herbert Hoover Dike, the Savannah Harbor Expansion project and the Everglades Ecosystem Restoration Program. Lee succeeds James Dalton who recently retired.

## EPA Names New Region 9 Administrator

Recently, EPA Administrator Andrew Wheeler announced that John Busterud will now be serving as the administrator of the EPA Region 9. Busterud served as counsel for PG&E from 1985-2016. In early February, EPA announced that the current region 9 administrator Michael Stoker, would no longer be serving in his position. Both Stoker and the EPA offered different reasons for his sudden departure. EPA region 9 includes the states of California, Arizona, Hawaii and Nevada.

## DOT Announces \$1 billion for BUILD Grant

The Department of Transportation (DOT) has published a Notice of Funding Opportunity (NOFO) to apply for \$1 billion in Fiscal Year (FY) 2020 discretionary grant funding through the Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grants program. The FY 2020 BUILD Transportation grants are for planning and capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant local or regional impact. BUILD funding can support roads, bridges, transit, rail, ports or intermodal transportation. Projects for BUILD will be evaluated based on merit criteria that include safety, economic competitiveness, quality of life, environmental sustainability, state of good repair, innovation, and partnership. DOT intends to award 50% of BUILD Transportation grant funding to projects located in rural areas. For this round of BUILD Transportation grants, the maximum grant award is \$25 million, and no more than \$100 million can be awarded to a single State. The deadline to submit applications in May 18, 2020.

## DOT Seeks Comments on Automated Vehicle Document

On February 6, the Department of Transportation and the White House Office of Science and Technology Policy invited public comment on the document *Ensuring American Leadership in Automated Technologies: Automated Vehicles 4.0 (AV 4.0)*. This document builds upon the previous document, *Preparing for the Future of Transportation: Automated Vehicles 3.0 (AV 3.0)* and expands the scope to 38 relevant United States Government components which have direct or tangential equities in safe development and integration of AV technologies. Comments are due by April 2, 2020.

**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: Joe A. Gonzalez, Facilities Manager  
SUBJECT: February 2020 Facilities Report

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**VHV PAINTING PROJECT:**

**Status: Project 30% Complete; Budget: On Budget**

The Ventura Harbor Village paint project is moving along, however unfortunately cold, windy and rainy days continues to slow down the momentum.

We continue to experience cold days, preventing paint to cure properly between coats, and recently more rain. With all these unfortunate weather conditions, the project is moving slower than expected. We are currently working on three buildings which are 1591 (The Ultimate Escape Rooms) this building has been 100% painted with all exterior walls, windowsills and wood trim, we are currently coordinating for the staircase's waterproofing coating and decking non-skid procedures. Building 1567 (Lighthouse) building is 90% completed, unfortunately the areas needed to be paint (staircase's walls) are on a location that's weather challenging to paint, first weather permitting opportunity it will be painted, making this building 100% completed. 1583 building (The Greek Mediterranean Steak & Seafood) is currently receiving fresh paint on the inner courtyard and on the West side (parking lot side) we anticipate to be finished with the exterior of this building within two weeks (weather permitting), our new strategy is to try to the best to our ability with this weather to finish with one building prior to jumping into the next building, we have managed to move the painting crew within the same building if the weather is not cooperating.

We continue to adjust the current painting schedule to reflect the delays we have experienced from the recent weather conditions to help minimize the impact on the Ventura Harbor Village businesses and all future marketing events.

Garland and their subcontractor have submitted change order #1 for \$1,650.00 for unforeseen dry rot that has/will address the dry rot located around several windows on 1567 and 1591 buildings. Change order was based on the agreed unit cost in the original proposal.

We continue to be pleased that Garland is considerate of our tenant needs and are working together with staff to accommodate our requests to make this a successful project.





### EV STATIONS UPDATE:

**Status: Construction 0% Complete; Budget: No cost**

ABM is currently working with the City of Ventura. Staff was notified by ABM that the City of Ventura has granted the permits for the installation of the EV charging units for both locations, 1691 Spinnaker, and Harbor Cove Beach, the District will be receiving the preliminary installation schedules as soon as ABM has coordinated with the sub-contractor who's performing the installations of the EV Charging stations.

Staff will be working closely with ABM to make sure the rate schedule is sorted at least two weeks before install.



Existing



New

### DRY STORAGE PROJECT:

**Status: Construction 90% Complete; Budget: Under**

Staff has gone into contract with a local contractor for the pavers project adjacent to the Dry storage. Contractor has started the process for the installation of the pavers, we anticipate this project to be completed within two weeks (weather permitting). By the accomplishing of the pavers, this will complete the entire Dry storage project.



## **STAIRCASES HANDRAILS CAPITAL IMPROVEMENT PROJECT:**

**Status: Project 100% Complete; Budget: Under**

One of the capital improvement items for this fiscal year is to replace all original wooden staircase handrails that are within the Ventura Harbor Village complex. Glad to report that the project is 100% completed

The original wooden handrails have been replaced with 316 Marine grade stainless-steel. All new stainless-steel handrails are ADA compliant.

Original wooden railing



New ADA compliance railing



## **BUILDING MAINTENANCE:**

The Maintenance Department has addressed a number of repairs associated with drainage, roof leaks, and plumbing that are exacerbated during rain events. By managing to complete most repairs in house, the department is able to significantly reduce costs while also responding more rapidly than through the exclusive use of contractors.

## **MARINA/MARKETING DEPARTMENT SUPPORT:**

The Maintenance Department continues to perform monthly inspections on all gangways, docks, fire extinguishers and fire boxes. They also continue to assist in setup for events and scheduled weddings, installation of banners, flags, etc.

**VENTURA PORT DISTRICT**  
**DEPARTMENTAL STAFF REPORT**

Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: John Higgins, Harbormaster  
SUBJECT: Harbormaster/Harbor Patrol Report

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**PUBLIC SAFETY**

**Overview:**

We continue to be busy with a wide variety of calls for service on both land and water. The ending of the dredge operations required our Harbor Patrol staff to work with Manson to ensure both the public and boaters were not caught up in the demobilization efforts. We were not aware of any boating-related issues during this visit.



There were several significant calls on the water over the past couple of weeks. I have copied some of the blotter entries submitted by Harbor Patrol Officer Tim Burrows. These are a snapshot of our activities and are sent weekly to a list of Marina Managers and local media.

**2/10/2020 10:30 am**, received a report of a possible missing person at the Ventura Pier from Ventura PD. After an investigation, it was determined that the clothing and personal belongings were thrown off the Pier and that the individual was located.

**2/15/2020 1:35 pm**, received a "Mayday" call on VHF 16 from a motor vessel with mechanical failure near the Mandalay powerplant. Officers responded in Rescue Boat 19 to assist the distressed vessel. The vessel was located near Oxnard Shores and taken en tow until TowBoat U.S. arrived and took over the tow.

**2/18/2020 10:06 am**, dispatched to a suicidal person in the water near the Pier. Officers responded in Rescue Boat 19 to assist. A rescue swimmer was deployed and helped convince the swimmer to head to shore where VFD and PD were.

**2/19/2020 1:01 pm**, received a report of a fuel spill at Daves fuel dock. Officers responded by sea and by land to find an inflatable boat had mistakenly filled the boat with 17 gallons of petro. VFD responded, the vessel isolated until the fuel is removed.

**2/27/2020 5:20 pm**, received an emergency report via VHF 16 about a person in the water near VWM C-dock. Officers responded by land and sea to assist the PIW. The patient was helped out of the water, and officers treated minor injuries.

On land, Harbor Patrol has been routinely contacting vagrants in the early morning hours and attempting to discourage them from loitering within Harbor. This continues to be challenging due to the significant growth of illegal campsites behind the River Haven area and its proximity to the Harbor.

**2/12/2020 11:50 pm**, dispatched to an assault in a parking lot near 1500 Anchors Way. Officers responded, staged, and assisted the victim after PD cleared the scene. The patient was transported to the fishing vessel he worked on after the incident.

**2/15/2020 7:08 am**, received a report of a transient who broke into the VWM laundry room and is refusing to leave. Officers responded and assisted Ventura PD with removing the individual who was wearing clothes being washed.



**2/15/2020 11:55 pm**, while on patrol, officers were alerted to a large group of transients near VWM from security. Officers assisted with removing the group of 10 transients near VWM that were loitering/trespassing on private property.

**Juvenile Grey Whale Visit:**

On Monday, March 9<sup>th</sup>, the Harbor Patrol observed a juvenile grey whale inside the Harbor and near the Port District office. Harbor Patrol Officers monitored the approximately 25' whale as it slowly cruised within the Harbor and over to the Public Launch Ramp.

Having encountered whales before, the Harbor Patrol made the necessary notifications and determined the best course of action would be to prevent agitating the whale and to allow it to find its way out on its own. Alex Broadie, Fleet Manager with Island Packers stopped by and shared his knowledge of the Grey Whales and suggested that the plan in place was the most appropriate.

Our staff stood by on land and answered curious onlookers questions for a little less than two hours before the whale decided he was done exploring and quietly departed the Harbor. In total, we estimate the whale was in the Harbor for about three hours. Including the more notable Humpback whale some years ago, there have been an additional three California Grey whales who have since visited.



**BEACHES**

**Harbor Cove:**

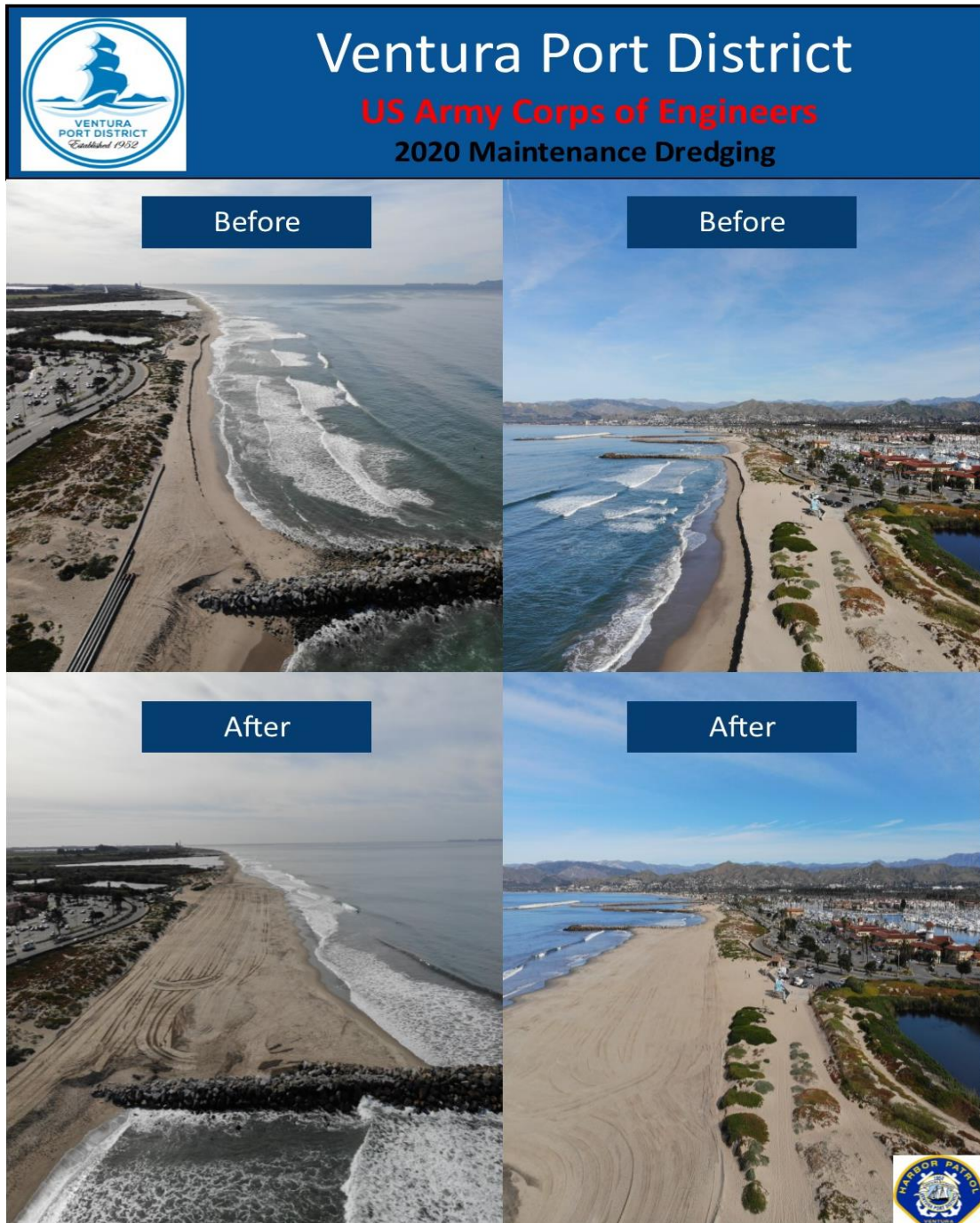
Harbor Cove has been active as the High School and College Beach Volleyball season is in full swing. Both have had several small tournaments over the past month and host daily practices.



The rest of the beach was restored to its previous state by Manson and areas where they were able to assist, they flattened or moved some sand as a courtesy to the Port District.

### **South Beach:**

The South Beach significantly benefited from the sand replenishment. The visual below shows a before and after. While this year's quantity was lower than years past, the beach should grow as the Summer cycle pushes some of the offshore sand back onto the beach.



## **EQUIPMENT**

I have been researching online station software to begin the process of phasing out paper documents and initiating a more comprehensive inventory, service, and asset management program. The products initially identified are cost-effective and can incorporate many modules utilizing both computers and smartphones. I am confident that I will find the right product in the next couple of weeks and work towards getting it up and going soon after. This software would fall within my Operations Budget and not require any changes in my existing budget.

## **TRAINING/MEETINGS/MOU'S**

- Attended Ventura County Fire Chiefs Monthly Meeting
- Marine Firefighting Training With Ventura City Fire Department
- Met with Ventura Police Bicycle Unit to discuss Harbor Issues
- Continued discussions with California State Parks Summer Lifeguard Contract
- Participated in Weekly Dredging Meetings

## **GRANTS**

**California Surrendered and Abandoned Vessel Exchange (SAVE) California Parks:** I am still awaiting the notice to proceed with the SAVE grant. In the past couple of week, there have been two new boat owners who are looking to participate in the program. I have spoken with the Marina Manager to keep him up to date on the status and my plan to proceed when the notice is received.

## **HARBOR ENTRANCE AND SOUNDINGS**

Dredging has concluded, and we are confident that there are no unknown issues.

## 911 CALLS DISPATCHED (31 CALLS RECEIVED)

| Incident                   | Case Numbers | Units  | Priority | Problem                      | Agency                         | Address                        | City    | Response Date            |
|----------------------------|--------------|--|----------|------------------------------|--------------------------------|--------------------------------|---------|--------------------------|
| <a href="#">20-0012321</a> |              | HAR11, ME2, MED473   | M5       | STROKE (CVA)                 | Ventura County Fire Department | 2890 Saylor Ave                | Ventura | 2/11/2020<br>2:08:48 PM  |
| <a href="#">20-0012878</a> |              | HAR11, HAR12, ME2, MED471  | M5       | ASSAULT NON EMD              | Ventura County Fire Department | 1500 Anchors Way               | Ventura | 2/13/2020<br>12:34:04 AM |
| <a href="#">20-0013478</a> |              | HAR11, ME2   | F7       | COMMERCIAL FIRE ALARM        | Ventura County Fire Department | 1050 Schooner Dr               | Ventura | 2/15/2020<br>12:25:59 AM |
| <a href="#">20-0013942</a> |              | HAR11, ME2   | F7       | INVESTIGATION                | Ventura County Fire Department | 1400-1999 Spinnaker Dr         | Ventura | 2/16/2020<br>3:50:37 PM  |
| <a href="#">20-0014078</a> |              | HAR11, ME2, MED471, MED472, MED473   | M7       | SICK PERSON NO CODE          | Ventura County Fire Department | 1215 Anchors Way               | Ventura | 2/17/2020<br>7:40:09 AM  |
| <a href="#">20-0014212</a> |              | HAR11, ME5, MED452   | M7       | ABDOMINAL PAIN NO CODE       | Ventura County Fire Department | 1215 Anchors Way               | Ventura | 2/17/2020<br>4:45:27 PM  |
| <a href="#">20-0014399</a> |              | B1, HAR11, ME1, MED473   | M5       | BEHAVIORAL EMERGENCY NON EMD | Ventura County Fire Department | 450 E Harbor Blvd              | Ventura | 2/18/2020<br>10:05:30 AM |
| <a href="#">20-0014547</a> |              | HAR11, HAR12, ME2, MED474  | M3       | BREATHING PROBLEMS HIGH      | Ventura County Fire Department | 1215 Anchors Way               | Ventura | 2/18/2020<br>5:51:33 PM  |
| <a href="#">20-0014803</a> |              | HAR11, ME2, MED662   | M7       | FALLS NO CODE                | Ventura County Fire Department | 2851 Seashore Ave              | Ventura | 2/18/2020<br>10:01:20 PM |
| <a href="#">20-0014882</a> |              | HAR11, ME2, MED471   | M1       | CARDIAC/RESP ARREST NON EMD  | Ventura County Fire Department | 2797 Seashore Ave              | Ventura | 2/19/2020<br>8:53:20 AM  |
| <a href="#">20-0014788</a> |              | SOA119, HAR11  | F7       | INVESTIGATION                | Ventura County Fire Department | 1404 Anchors Way               | Ventura | 2/19/2020<br>1:00:18 PM  |
| <a href="#">20-0015718</a> |              | HAR11, ME2, MED474, MED492   | M5       | CHEST PAIN NON TRAUMA        | Ventura County Fire Department | E Harbor Bl / Spinnaker Dr     | Ventura | 2/22/2020<br>7:34:04 PM  |
| <a href="#">20-0015929</a> |              | B15, B3, SOA117, SOA119, CSTGH01, EMS48, HAR11, LIFE GU2, ME1, ME2, MED473, OR1                                | F5       | OCEAN RESCUE LOW             | Ventura County Fire Department | 1-199 Shoreline Dr             | Ventura | 2/23/2020<br>4:46:30 PM  |
| <a href="#">20-0016360</a> |              | HAR11, ME2, MED471   | M3       | BREATHING PROBLEMS HIGH      | Ventura County Fire Department | 2610 Bayshore Ave              | Ventura | 2/25/2020<br>12:33:21 AM |
| <a href="#">20-0016582</a> |              | HAR11, ME2   | F7       | RESIDENTIAL FIRE ALARM       | Ventura County Fire Department | 1062 Peninsula St              | Ventura | 2/25/2020<br>4:18:54 PM  |
| <a href="#">20-0016868</a> |              | HAR11, ME2, MED421   | M5       | OVERDOSE/POISONING NON EMD   | Ventura County Fire Department | 3750 E Harbor Bl               | Ventura | 2/25/2020<br>11:00:25 PM |
| <a href="#">20-0017540</a> |              | HAR11, ME5, MED472   | M3       | FALLS HIGH                   | Ventura County Fire Department | 1215 Anchors Way               | Ventura | 2/27/2020<br>12:39:20 PM |
| <a href="#">20-0017241</a> |              | B15, B2, B81, SOA115, HAR11, ME1, ME2, ME3, ME5, MED3, MT5, TR1  | F3       | MARINA FIRE                  | Ventura County Fire Department | 34°14'35.77"N / 119°15'48.99"W | Ventura | 2/27/2020<br>8:39:58 PM  |
| <a href="#">20-0018171</a> |              | A2, B23, B3, B81, C11, E188, HAR11, ME1, ME2, ME5, UT  | F3       | VEGETATION FIRE              | Ventura County Fire Department | E Harbor Bl / Olivas Park Dr   | Ventura | 3/2/2020<br>7:06:48 AM   |
| <a href="#">20-0018872</a> |              | HAR11, ME2, MED472, MED492   | M5       | TRAUMATIC INJURIES NON EMD   | Ventura County Fire Department | 3750 E Harbor Bl               | Ventura | 3/4/2020<br>11:18:37 AM  |
| <a href="#">20-0019197</a> |              | AKNS08, B15, B2, B81, CSTGH01, E188, EMS42, HAR11, LIFE GU2, ME4, ME6, ME7, MED472, MT5, OR1, OR25, OR88, TR81 | F4       | OCEAN RESCUE HIGH            | Ventura County Fire Department | 2504 Pierpont Blvd             | Ventura | 3/5/2020<br>11:19:23 AM  |
| <a href="#">20-0019199</a> |              | HAR11, ME6, MED472   | M7       | ABDOMINAL PAIN NO CODE       | Ventura County Fire Department | 2610 Bayshore Ave              | Ventura | 3/5/2020<br>11:30:30 AM  |
| <a href="#">20-0019839</a> |              | HAR11, ME2, MED473   | M3       | UNCONSCIOUS/FAINT HIGH       | Ventura County Fire Department | 1880 Spinnaker Dr              | Ventura | 3/7/2020<br>9:29:23 AM   |
| <a href="#">20-0019973</a> |              | HAR11, ME2, MED661   | M3       | SICK PERSON HIGH             | Ventura County Fire Department | 1755 Spinnaker Dr              | Ventura | 3/7/2020<br>5:17:45 PM   |
| <a href="#">20-0020031</a> |              | HAR11, ME2, MED471   | M3       | BREATHING PROBLEMS HIGH      | Ventura County Fire Department | 1215 Anchors Way               | Ventura | 3/7/2020<br>8:29:00 PM   |
| <a href="#">20-0020298</a> |              | HAR11, ME2, MED474   | M5       | STROKE (CVA)                 | Ventura County Fire Department | 1389 Beaumont St               | Ventura | 3/9/2020<br>11:29:24 PM  |
| <a href="#">20-0020309</a> |              | HAR11, ME2, MED471   | M5       | UNKNOWN PROBLEM NON EMD      | Ventura County Fire Department | Spinnaker Dr / E Harbor Bl     | Ventura | 3/9/2020<br>12:40:00 AM  |
| <a href="#">20-0020830</a> |              | HAR11, ME2, MED474   | M3       | BREATHING PROBLEMS HIGH      | Ventura County Fire Department | 1198 Navigator Dr              | Ventura | 3/9/2020<br>10:09:18 PM  |
| <a href="#">20-0020883</a> |              | HAR11, ME2, MED471   | M5       | BEHAVIORAL EMERGENCY NON EMD | Ventura County Fire Department | 3097 Seashore Ave              | Ventura | 3/10/2020<br>3:38:56 AM  |
| <a href="#">20-0020886</a> |              | HAR11, ME1, MED473   | M5       | CONVULSIONS/SEIZURES         | Ventura County Fire Department | 2930 Saylor Ave                | Ventura | 3/10/2020<br>5:47:35 PM  |
| <a href="#">20-0020915</a> |              | HAR11, ME2, MED471, MED492   | M5       | FALLS                        | Ventura County Fire Department | 2971 Saylor Ave                | Ventura | 3/10/2020<br>8:10:39 PM  |

**VENTURA PORT DISTRICT  
DEPARTMENTAL STAFF REPORT**

Meeting Date: March 18, 2020

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TO: Board of Port Commissioners  
FROM: Dave Werneburg, Marina Manager / Commercial Fisheries  
SUBJECT: February 2020 Marina Report

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**Commercial Fishing**

**California Market Squid Harvest – Ventura Harbor**

- February 2020 – 72 Landings totaling 715 tons.
- 19 - 20YTD (Starting April 1, 2019): 569 landings, 9,042,803 lbs. / 4,521 tons.
- California Squid Season Limit: 118,000 tons.

While landings at Ventura continue to lag, there have been promising signs just south of us. This past week, San Pedro / Long Beach have landed nearly 1,200 tons from the Catalina and St. Nicholas areas. The quality and size of product being landed, both at Ventura and San Pedro, are better than average and more consistent with market expectations.

The 2019-2020 Squid Season officially ends March 31, 2020 since the season limit of 118,000 tons was not realized. The 2020-2021 Squid Season opens the follow day, April 1<sup>st</sup>. In 2013-14 we had a very good run with summer squid reaching the 118,000-ton limit by October. Hope springs eternal.

**Ventura Harbor Village Marina**

|                  |             |      |
|------------------|-------------|------|
| Total Slip Count | 106 / 103 * | 100% |
| Slips Assigned   | 96          | 93%  |
| Slips Occupied   | 81          | 79%  |
| Slips Available  | 7           | 7%   |

\*3 slips not navigable at this time; may require dredging.



# MARKETING HIGHLIGHTS

DATE RANGE: FEBRUARY 1 - FEBRUARY 29, 2020



**I ♥ THE SEA** - Installation of an 'instagrammable' space, utilizing some of the lettering from the holiday display. Sign installed week prior to Valentine's Day holiday weekend - will keep in place until summer, as it remains relevant to our branding for Mermaid Month and Spring Break. Reports of visitors queued up to take photos with the installation on the weekends. ➡



## Tourism Partnership - Denver Adventure & Travel Show

Ventura County Coast invited local attractions and bureaus to participate in the Denver Travel show to share info with interested consumer travelers, as there is now new air lift opportunities into the Central Coast region. Several CA destinations and attractions present. Marketing Manager in attendance to represent Ventura Harbor, Island Packers, & Channel Islands National Park. 400+ emails collected to add to Harbor subscriber base.



## PR Highlights

Collaborated with Somerville Associates to write and distribute a **Ventura Harbor Village Valentine's Blog** to regional and national bloggers and **Ventura Harbor Mermaid Month** Press Release to (832) California dailies, weeklies, freelancers, online media, and magazine editors. Editorials about **Mermaid Month** appeared in NBC "Worth the Drive" Los Angeles (3.5 mil), **Ventura Breeze** newspaper (11k) and in the **Log Newspaper** (40k). Other secured editorial coverage included Valentine's Day articles in the **The Signal Newspaper** (9.6k), **Ventura County Star Newspaper** (35k) and in **VC Reporter** (31.5k) and in **Camarillo Macaroni Kid** regarding Islands Packers cruises. Wrote and distributed the Ventura Harbor **Village Refresh Painting Project** received coverage in The Log newspaper (Feb. 21) and front page of the **Ventura Breeze** (Feb. 12). Submitted Spring Events Content to **Central Coast Tourism PR** agency and Arts & Culture in the Village content. Hosted journalist/blogger Jennifer Cunningham of **Madame Noire** and **Am New York** (Feb. 17 - President's Day) via Central Coast Tourism to Ventura Harbor Village to Andria's Seafood, Village Carousel & Arcade, Coastal Cone, shopping, Channel Islands Visitor Center, and arranged live music. Curated photo and content for **805 Magazine** featuring Lemon & Lei's lavender soap for Wellness February Issue.

## Meetings & Tours



- **Feb 4** - Brophy Bros/Fratelli's Update
- **Feb 6** - Village Tour for Portside Management
- **Feb 6** - How This is Made Meet up with interested Village Tenants
- **Feb 10 & 11** - Visit California Outlook Forum
- **Feb 19** - Ventura County Film Permit Summit
- **Feb 19** - Met with 'Trendi Eats' foodie influencers
- **Feb 20** - Tenant Party celebrating milestones
- **Feb 27** - Oxnard Jazz Festival Producers





# VENTURA HARBOR EVENTS

DATE RANGE: FEBRUARY 1 - FEBRUARY 29, 2020



## VILLAGE TENANT BLOCK PARTY

Thank you to the 26 Harbor Village businesses that attended the Block Party on February 20th! VPD General Manager Brian Pendleton hosted the gathering to acknowledge the number of successful years in 5 year increments at the Harbor Village (see lists below). Special plaque's handed out were made of reclaimed wood, furthering our message of sustainability in Ventura Harbor.



### Less than 5 years:

- Lemon & Lei
- Top This Chocolate
- Anja's Boutique
- Fratellis Pizza & Brew

- Ventura Dockside Market
- Harbor Market & Liquor
- Lost In Socks
- The Ultimate Escape Rooms
- Wild Local Seafood Co., LLC

**32** VILLAGE TENANTS RECEIVED A SPECIAL CERTIFICATE OR WOOD PLAQUE

**26** HARBOR VILLAGE BUSINESSES ATTENDED THE GATHERING

A special thank you to Commissioner Gardina for attending & helping to present awards!

### 5 Year:

- Barefoot Boutique
- Boatyard Pub
- Mermaid Gallery
- Silhouettes by the Beach Salon
- Ventura County Potters' Guild Gallery

### 10 Year:

- Brophy Bros. Clam Bar & Restaurant
- Harbor Village Gallery & Gifts
- 805 Bar & Grilled Cheese
- Copa Cubana
- Ventura Harbor Comedy Club
- Ventura Boat Rentals / Just for Dreamers

### 15 Year:

- Baja Bay Surf N' Taco
- Coastal Cone
- The Parlor
- Le Petit Café & Bakery
- Margarita Villa Mexican Restaurant
- Village Carousel & Arcade

### 20 Year:

- Hats Unlimited
- Ventura Swimwear

### 25 Year:

- Treasure Cove
- The Greek Mediterranean Steak & Seafood

### 30 Year:

- Casa de Regalos

### 35 Year:

- Andria's Seafood Restaurant & Market
- Ventura Dive & Sport

### 40 Year:

- Island Packers

## VALENTINE'S SOCIAL MEDIA CONTEST

This sweet treat giveaway ran as a Facebook ad gaining **419** email subscribers and on Instagram receiving **937** tags. This social exposure was an effort to put Ventura Harbor at top of mind for visitors & locals as the ideal destination for dining, desserts, gifts, and seaside experiences. Specifically highlighted prizes from 5 different tenants.



## VALENTINE'S VISITOR ACTIVITIES

On February 14th & February 15th, visitors were engaged with:

- A Valentine's Visitors Booth & Selfie Station with photo props
- Onsite Gift Card Giveaway to Top This Chocolate
- Free Custom 'Seaside Love' Postcards with Free Postage
- A Large Heart Display to write 'Love Letters to the Sea'
- Love Readings, Face Painting, and Tropical Bird Photos

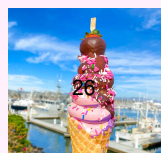


**70K**

LIKES, COMMENTS, AND SHARES ON ALL SOCIAL MEDIA FOR VALENTINES RELATED CONTENT

**16K**

EBLAST SUBSCRIBERS WERE REACHED WITH 308 CLICK THROUGH TO THE WEBSITE





# VENTURA HARBOR PROMO

DATE RANGE: FEBRUARY 1 - FEBRUARY 29, 2020

YOUR WINTER

# SEASIDE HOT SPOT

10+ HANDCRAFTED  
**CHOWDERS**  
and HEARTY SOUPS

CLICK FOR MONTH-LONG  
CHOWDER GIVE-A-WAYS & MORE!

## VENTURAHARBORVILLAGE.com

### Media channels promoting Ventura Harbor as Seaside Hot Spot for Clam Chowder in the month of February:

- Dedicated Content Page on Village Site for Chowders & Soups
- Banner Ads on VenturaHarborVillage.com
- KHAY 101.7 FM Radio
- Santa Clarita Signal (Print/Digital)
- 805 Living Magazine
- Valley Scene Newspaper (Print/Digital)
- VC Star Banner Ads
- VC Reporter (Print/Digital)
- Ventura Breeze Print Ad
- Paid Facebook Advertising
- Boosted Social Posts
- Google Ads
- Downtown Big Belly Ads (displayed at California, Santa Clara & Main St)
- Ventura Chamber of Commerce Connection Breakfast Slide Ads
- On-Site Banners in Harbor Village
- Electronic Sign on Harbor Blvd.
- Posters in Harbor Village
- Harbor Enewsletter to 18k+ subscribers
- Ventura Visitor Center Featured Poster
- Back Panel of 10k Village Maps
- Dedicated Photo Shoot (see below for each restaurant's unique chowder)
- Clam Chowder Social Media Giveaway



### SEASIDE LOVE CAMPAIGN



### Seaside Love Campaign for Valentine's Day & President's Weekend:

- Dedicated web page for Valentines offers
- Dedicated blog/press release distributed
- Photography shoot of merchandise
- Design & print new "Seaside Love" postcard
- Banners displayed on homepage of website
- VC Star Banner Ad driving traffic to website
- Facebook Ads / Google Ads / Boosted Posts
- Print Ads: Valley Scene Magazine / Santa Clarita Signal / Ventura Breeze
- Ventura Chamber of Commerce slide promo
- Harbor E-newsletter to over 18k subscribers
- VC Reporter E-blast
- KHAY 100.7 FM Radio Ad

### NATIONAL CLAM CHOWDER DAY GIVEAWAY

This savory giveaway ran on Facebook and Instagram with **653 total entries**... 10 winners were selected to try 10 different Chowders we feature in Ventura Harbor!





# SOCIAL MEDIA & WEB

DATE RANGE: FEBRUARY 1 - FEBRUARY 29, 2020



## INSTAGRAM

Sample Imagery Posted



Followers

17.1K ▲ 3.48%

Impressions

203K

Engagements

8.4K



## FACEBOOK

Sample Imagery Posted



Followers

25K

Impressions

575K ▲ 1.5%

Engagements

24.8K ▲ 15.2%



## TWITTER

Sample topics included...

Followers

5,380

Impressions

11.3K



**Ventura Harbor** @VenturaHarbor · Feb 4

#VenturaHarbor thanks the efforts of the #USArmyCorpsOfEngineers and their contractor Manson Construction for helping maintain the navigation channel in and out of our harbor.



**Ventura Harbor** @VenturaHarbor · Feb 12

Thank you Coastal Conservancy Commissioners & staff for the grant in support of #VenturaHarbor! This grant awards up to \$318k that reduces Port District's funds to install a 1 ton crane at our commercial fish pier & enhances commercial fishing gear storage & net repair facility.



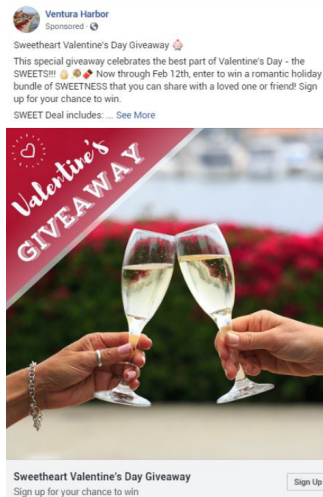
## PAID DIGITAL ADVERTISING

### Paid Facebook Ad Samples - Feb. 2020

Paid Ads resulted in:

- **124k** Impressions
- **53k** Reach
- **2.8k** Click-thrus to VenturaHarborVillage.com

Over **\$750** spent on social media advertising and paid boosted posts on Instagram



## WEB PERFORMANCE

Users

10.1K

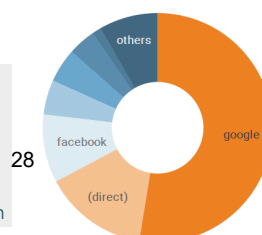
Page Views

26.8K

### Improvements

In February 2020, we saw an increase in 'Average Session Duration' and 'Pages Per Session' on VenturaHarborVillage.com

### Top Traffic Sources



- google
- (direct)
- facebook
- Facebook
- Ventura Harbor Village Newsletter
- m.facebook.com
- VCStar
- others



### Google Ads - Feb. 2020

- **\$1850** Spend
- **61.6k** Impressions
- **2,9k** Clicks



**VENTURA PORT DISTRICT  
DEPARTMENTAL STAFF REPORT**

Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: Robin Baer, Property Manager  
SUBJECT: February 2020 Property Manager Report

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**CURRENT TENANT REPORT**

- 1) *Anja's Boutique* – 1591 Spinnaker Drive #113 – Tenant has officially Opened at her new location 1591 Spinnaker #113. Tenant has added a “Men’s” line to her collection and plans on adding new designs for the Women’s clothing and shoe inventory.
- 2) *Frenchies Nail Salon* – 1583 Spinnaker Drive #105 –Tenant has received her Certificate of Occupancy and estimates opening March 30, 2020.

**CURRENT AVAILABILITY REPORT**

- 1) *1559 Spinnaker Drive #103* – Formerly Anja’s Boutique which relocated in February to a larger suite in the village. Now available for lease.
- 2) *1567 Spinnaker Drive #100* – Staff has received a proposal and is currently reviewing the contents.
- 3) *1591 Spinnaker Drive #114 & 115 (formerly BS Taproom)* --- This space is being advertised on all of our leasing outreach programs listed below. Staff is discussing leasing opportunities with a prospective tenant that submitted a complete business proposal.

**LEASING OUTREACH**

- A) Leasing Outreach – Daily exposure with our ads online via LoopNet/CoStar which covers the following:
- Top three commercial real estate marketplaces:
    - Craigslist advertisements;
    - LoopNet, City Feet and Showcase and;
    - 150 plus online newspaper websites including Wall Street Journal
    - 24 Million visitors to these sites /200,000 real estate professionals use CoStar

## OCCUPANCY LEVELS AT HARBOR VILLAGE

February 2020

| CATEGORY   | TOTAL   | Harbor  | Harbor  | Harbor    | Harbor    | City *  | City *    |
|--|---------|---|---------|-----------|-----------|---------|-----------|
|  | Square  | Vacancy   | Vacancy | Available | Available | Vacancy | Available |
|  | Footage | Sq Ft   | %       | Sq Ft     | %         | %       | %         |
| Office   | 19,828  | 0   | 0%      | 0         | 0%        | 20%     | 21%       |
| Retail   | 22,613  | 400   | 2%      | 6,698     | 30%       | 20%     | 30%       |
| Restaurant   | 33,220  | 1,751   | 5%      | 1,751     | 5%        | N/A     | N/A       |
| <b>&gt; Harbor Vacancy --- No tenant or lease</b>                                      |         |   |         |           |           |         |           |
| Office ----  |         | None  |         |           |           |         |           |
| Retail ---   |         | 1559 Former Anja's Boutique #103                                      |         |           |           |         |           |
| Restaurant ---   |         | 1591 Former BS Tap #114 & #115  |         |           |           |         |           |
| <b>&gt; Harbor Available --- Tenant on MTM lease, including Harbor Vacancy numbers</b> |         |   |         |           |           |         |           |
| Office ----  |         | None  |         |           |           |         |           |
| Retail ---   |         | 1567 Carousel #100, 1583 Lemon & Lei #104A, 1559 Anja's Boutique #103 |         |           |           |         |           |
| Restaurant ---   |         | 1591 Former BS Tap #114 & #115  |         |           |           |         |           |
| <b>* City --- Based on comparable square footage within Ventura 93001 area</b>         |         |   |         |           |           |         |           |
| <b>** Occupancy Levels for Office -- tend to be lower due to shorter lease terms</b>   |         |   |         |           |           |         |           |
| <b>*** City Restaurant vacancy/available as reported by CoStar Program</b>             |         |   |         |           |           |         |           |

## SALES REPORTS

The attached summary for January provides sales for three categories: restaurants, retail and charters. The reports compare the monthly sales for 2019 and 2020. They also include year-to-date comparisons. The year-to-date overall sales for January were up 15.6% from the same time last year.

## ATTACHMENTS

Attachment 1 – Sales Summary – January 2019

# ATTACHMENT 1

## Ventura Harbor Village Tenant Sales Summary

Month of  
01/2020

|             | <u>January-2020</u> | <u>January-2019</u> | <u>%<br/>Change</u> |
|-------------|---------------------|---------------------|---------------------|
| Restaurants | \$ 1,094,391        | \$ 979,364          | 11.75%              |
| Retail      | \$ 290,621          | \$ 233,449          | 24.49%              |
| Charters    | \$ 252,849          | \$ 204,439          | 23.68%              |
| Total       | \$ 1,637,861        | \$ 1,417,252        | 15.57%              |

Year-to-date through January 2020

|             | <u>January-2020</u> | <u>January-2019</u> | <u>%<br/>Change</u> |
|-------------|---------------------|---------------------|---------------------|
| Restaurants | \$ 1,094,391        | \$ 979,364          | 11.75%              |
| Retail      | \$ 290,621          | \$ 233,449          | 24.49%              |
| Charters    | \$ 252,849          | \$ 204,439          | 23.68%              |
| Total       | \$ 1,637,861        | \$ 1,417,252        | 15.57%              |



# BOARD OF PORT COMMISSIONERS

MARCH 18, 2020

## CONSENT AGENDA ITEM A

APPROVAL OF OUT OF  
TOWN TRAVEL REQUESTS

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**CONSENT AGENDA ITEM A**  
Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
SUBJECT: Out of Town Travel Requests

---

**RECOMMENDATION:**

That the Board of Port Commissioners approve the following out of town travel requests for:

- A) Senior Harbor Patrolman, Pat Hummer to travel to Sacramento, California to participate in the 3<sup>rd</sup> Annual California Boating Congress from March 30, 2020 to April 1, 2020. Attending this meeting will allow for Mr. Hummer to learn about the current trends and needs in the boating industry and meet with local representatives to lobby greater support for issues relating to Ventura Harbor. Estimated cost for the travel is as follows:

|               |                   |
|---------------|-------------------|
| Registration  | \$179.00          |
| Lodging       | \$508.98          |
| Meals         | \$190.00          |
| Mileage       | \$431.25          |
| Miscellaneous | \$100.00          |
| <b>TOTAL</b>  | <b>\$1,409.23</b> |



# BOARD OF PORT COMMISSIONERS

MARCH 4, 2020

## STANDARD AGENDA ITEM 1 BROWN ACT PRESENTATION

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**STANDARD AGENDA ITEM 1**  
Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: Andy Turner, Legal Counsel  
SUBJECT: Brown Act Presentation

---

**RECOMMENDATION:**

That the Board of Port Commissioners receive a presentation from Lagerlof Lawyers, general legal counsel to the Ventura Port District, on the Ralph M. Brown Act.

**SUMMARY:**

During the January 22, 2020 Board of Port Commissioners meeting, the Board requested the preparation of a presentation on the Ralph M. Brown Act (Brown Act) and its governance of District board meetings.

**BACKGROUND:**

The Brown Act was introduced as state legislation in 1953 and continues to govern the conduct of state and local public agencies within California. The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings.

"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."

**FISCAL IMPACT:**

None.

**ATTACHMENTS:**

Attachment 1 – Open & Public V – A guide to the Ralph M. Brown Act  
Attachment 2 – Understanding the Brown Act

# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016





**ACKNOWLEDGEMENTS**

The League thanks the following individuals for their work on this publication:

**Brown Act Committee**

Michael Jenkins, Committee Chair  
City Attorney, Hermosa Beach, Rolling Hills and West Hollywood

Michael W. Barrett  
*City Attorney, Napa*

Damien Brower  
*City Attorney, Brentwood*

Ariel Pierre Calonne  
*City Attorney, Santa Barbara*

Veronica Ramirez  
*Assistant City Attorney, Redwood City*

Malathy Subramanian  
*City Attorney, Clayton and Lafayette*

Paul Zarefsky  
*Deputy City Attorney, San Francisco*

Gregory W. Stepanicich  
*1st Vice President, City Attorneys' Department*  
*City Attorney Fairfield, Mill Valley, Town of Ross*

**League Staff**

Patrick Whitnell, *General Counsel*

Koreen Kelleher, *Assistant General Counsel*

Corrie Manning, *Senior Deputy General Counsel*

Alison Leary, *Deputy General Counsel*

Janet Leonard, *Legal Assistant*



# Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

*"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."*<sup>1</sup>

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

*"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*<sup>2</sup>

The Brown Act's other unchanged provision is a single sentence:

*"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."*<sup>3</sup>

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

### Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

**PRACTICE TIP:** The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

### Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.<sup>4</sup>

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.<sup>5</sup>

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

### Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

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**PRACTICE TIP:** Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

---

### Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

**PRACTICE TIP:** Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

### Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely

to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.<sup>6</sup> Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.



A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

### Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

### Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

---

**PRACTICE TIP:** The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

---



**ENDNOTES:**

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3(b)(1)
- 3 California Government Code section 54953(a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
- 5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).



# Chapter 2

## LEGISLATIVE BODIES

What is a “legislative body” of a local agency? ..... 12

What is not a “legislative body” for purposes of the Brown Act? ..... 14

# Chapter 2

## LEGISLATIVE BODIES

*The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>*



### What is a “legislative body” of a local agency?

A “legislative body” includes:

- **The “governing body”** of a local agency<sup>2</sup> and certain of its subsidiary bodies; “or any other local body created by state or federal statute.”<sup>2</sup> This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.<sup>6</sup>

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.<sup>7</sup> Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

**Q.** On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

**A.** *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

**PRACTICE TIP:** The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.<sup>8</sup>

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup>
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>12</sup> These include some nonprofit corporations created by local agencies.<sup>13</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>14</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>15</sup>

**Q:** The local chamber of commerce is funded in part by the city. The mayor sits on the chamber’s board of directors. Is the chamber board a legislative body subject to the Brown Act?

**A:** *Maybe. If the chamber’s governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

**Q:** If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

**A:** *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

**PRACTICE TIP:** It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee’s charge, or whether the committee exists long enough to have “continuing jurisdiction.”

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>16</sup>

### What is not a “legislative body” for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.<sup>17</sup> Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.<sup>18</sup>
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.<sup>19</sup>

**Q.** A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

**A.** *No, because the committee has not been established by formal action of the legislative body.*

**Q.** During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

**A.** *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>20</sup>
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.<sup>21</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>22</sup>

#### ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127



- 2 California Government Code section 54952(a) and (b)
- 3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805
- 9 California Government Code section 54952(b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793
- 12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5
- 15 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129
- 19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879
- 21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513
- 22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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# Chapter 3

## MEETINGS

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# Chapter 3

## MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."<sup>1</sup> The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.<sup>2</sup>

### Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.<sup>3</sup>
- **"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 notice requirements for special meetings and are subject to 24-hour posting requirements.<sup>4</sup>
- **"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.<sup>5</sup>
- **"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.<sup>6</sup>

### Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:<sup>7</sup>

#### Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

### Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

### Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.



**"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**

*The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.





### Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.<sup>8</sup> Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside

from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

**Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

**A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

**Q.** The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

**A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

### Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).<sup>9</sup>

**Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

**A.** *She may attend, but only as an observer; she may not participate.*

### ***Social or Ceremonial Events***

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

### ***Grand Jury Testimony***

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.<sup>10</sup> This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

### **Collective briefings**

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

### **Retreats or workshops of legislative bodies**

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.<sup>11</sup>



**Q.** The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

**A.** *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

### **Serial meetings**

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."<sup>12</sup> The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members,



communicates with a majority of members (the spokes) one-by-one for discussion, deliberation, or a decision on a proposed action.<sup>13</sup> Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting “with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of

the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.”<sup>14</sup>

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.<sup>15</sup>

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.<sup>16</sup> Such a memo, however, may be a public record.<sup>17</sup>

**The phone call was from a lobbyist. “Say, I need your vote for that project in the south area. How about it?”**

**“Well, I don’t know,” replied Board Member Aletto. “That’s kind of a sticky proposition. You sure you need my vote?”**

**“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you I’d be over the top.”**

**Moments later, the phone rings again. “Hey, I’ve been hearing some rumbles on that south area project,” said the newspaper reporter. “I’m counting noses. How are you voting on it?”**

*Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating*

*a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.*

**The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

*Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."<sup>18</sup> Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.*

**"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**

**"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**

**"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

*The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.*

- Q.** The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.

**PRACTICE TIP:** When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply to all” button that may inadvertently result in a Brown Act violation.

### Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>19</sup> A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

**Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop’s Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence in no way lessens the potential for a violation of the Brown Act.*

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*



### Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.<sup>20</sup> While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either



audio or video, or both.”<sup>21</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:<sup>22</sup>

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

**Q.** A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

**A.** *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

## Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>23</sup>

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:<sup>24</sup>

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency’s territory, provided the meeting is limited to items relating to that real or personal property;

**Q.** The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

**A.** *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- 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;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.<sup>25</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential

employee from another district.<sup>26</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>27</sup>

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 have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>28</sup>



**Endnotes:**

- 1 California Government Code section 54952.2(a)
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 3 California Government Code section 54954(a)
- 4 California Government Code section 54956
- 5 California Government Code section 54956.5
- 6 California Government Code section 54955
- 7 California Government Code section 54952.2(c)
- 8 California Government Code section 54952.2(c)(4)
- 9 California Government Code section 54952.2(c)(6)
- 10 California Government Code section 54953.1
- 11 “*The Brown Act*,” California Attorney General (2003), p. 10
- 12 California Government Code section 54952.2(b)(1)
- 13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 14 California Government Code section 54952.2(b)(2)
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 17 California Government Code section 54957.5(a)
- 18 California Government Code section 54952.2(b)(2)
- 19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 20 California Government Code section 54953(b)(1)
- 21 California Government Code section 54953(b)(4)
- 22 California Government Code section 54953
- 23 California Government Code section 54954(b)
- 24 California Government Code section 54954(b)(1)-(7)
- 25 94 Ops.Cal.Atty.Gen. 15 (2011)
- 26 California Government Code section 54954(c)
- 27 California Government Code section 54954(d)
- 28 California Government Code section 54954(e)

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

### Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> While posting an agenda on an agency’s Internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.<sup>4</sup>

**Q.** May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

**A.** *At a minimum, the Brown Act calls for “substantial compliance” with all agenda posting requirements, including posting to the agency website.<sup>5</sup> Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.<sup>6</sup> This inquiry requires a fact-specific examination of whether the agency or its legislative body made “reasonably effective efforts to notify interested persons of a public meeting” through online posting and other available means.<sup>7</sup> The Attorney General’s opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

*awareness, among other factors.<sup>8</sup> The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.*

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."<sup>9</sup> Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.<sup>10</sup>

**PRACTICE TIP:** Putting together a meeting agenda requires careful thought.

**Q.** The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

**A.** *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of \$50,000 for traffic engineering services regarding traffic on Eighth Street."*

**Q.** The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

**A.** *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

### Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>11</sup>



### Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.

Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.<sup>12</sup>

### Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>13</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.<sup>14</sup> A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>15</sup>

### Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>16</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.



News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

### **Notice of compensation for simultaneous or serial meetings**

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.<sup>17</sup>

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

### **Educational agency meetings**

The Education Code contains some special agenda and special meeting provisions.<sup>18</sup> However, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>19</sup> A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.<sup>20</sup>

### **Notice requirements for tax or assessment meetings and hearings**

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.<sup>21</sup> Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>22</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.





### Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:<sup>23</sup>

- When a majority decides there is an “emergency situation” (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action “came to the attention of the local agency subsequent to the agenda being posted.” This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

**“I’d like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project,” said Chair Lopez.**

**“It’s not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I’d like to keep it that way. Do I hear a motion?”**

*The desire to stay ahead of schedule generally would not satisfy “a need for immediate action.” Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.*

**“We learned this morning of an opportunity for a state grant,” said the chief engineer at the regular board meeting, “but our application has to be submitted in two days. We’d like the board to give us the go ahead tonight, even though it’s not on the agenda.”**

*A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:*

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

### Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

**PRACTICE TIP:** Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.



While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.<sup>24</sup> However, caution should be used to avoid any discussion or action on such items.

**Council Member Jefferson: I would like staff to respond to Resident Joe’s complaints during public comment about the repaving project on Elm Street — are there problems with this project?**

**City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.**

**Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.**

*It is clear from this dialogue that the Elm Street project was not on the council’s agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.*



## The right to attend and observe meetings

A number of Brown Act provisions protect the public’s right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise “fulfill any condition precedent” to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>25</sup>

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>26</sup> This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>27</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>28</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>29</sup>

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.<sup>30</sup>

**Q:** The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

**A:** *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.<sup>31</sup> Ejection is justified only when audience members actually disrupt the proceedings.<sup>32</sup> If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.<sup>33</sup>

### Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.<sup>34</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>35</sup>

**Q:** In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

**A:** *No. The memorandum is a privileged attorney-client communication.*

**Q:** In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

**A:** *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*



A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.<sup>36</sup> A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.<sup>37</sup>

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>38</sup> The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.<sup>39</sup>

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.<sup>40</sup>

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.<sup>41</sup>

### The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.<sup>42</sup>

**Q.** Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

**A.** *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.<sup>43</sup>



**PRACTICE TIP:** Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

**Q.** May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

**A.** *No, as long as the criticism pertains to job performance.*

**Q.** During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

**A.** *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*



The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.<sup>44</sup>

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>45</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.<sup>46</sup>

### Endnotes:

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 \_\_\_ Ops.Cal.Atty.Gen.\_\_\_, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacific LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 \_\_\_ Ops.Cal.Atty.Gen.\_\_\_, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).







# Chapter 5

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# Chapter 5

## CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.<sup>1</sup>



As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.<sup>2</sup> The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>3</sup>

**PRACTICE TIP:** Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),<sup>4</sup> the Brown Act does not authorize closed sessions for other contract negotiations.

### Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.<sup>5</sup> An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.<sup>6</sup>

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.<sup>7</sup>

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>8</sup>

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.<sup>9</sup> The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.<sup>10</sup>

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.<sup>11</sup> If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.<sup>12</sup> A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

## Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.<sup>13</sup>

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.<sup>14</sup> The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.<sup>15</sup> For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.<sup>16</sup>

**PRACTICE TIP:** Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>17</sup> In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.<sup>18</sup>

### *Existing litigation*

- Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local

agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.<sup>19</sup>

### *Anticipated exposure to litigation against the local agency*

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.<sup>20</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and

circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

### *Anticipated initiation of litigation by the local agency*

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed





session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.<sup>21</sup> Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

### Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A “lease” includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body’s negotiator on price and terms of payment.<sup>22</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>23</sup>



**Q.** May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

**A.** *No. However, there are differing opinions over the scope of the phrase “price and terms of payment” in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of “price and terms of payment.” Others take a narrower, more literal view of the phrase.*

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern<sup>24</sup> and the names of the parties with whom its negotiator may negotiate.<sup>25</sup>

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.<sup>26</sup>

**“Our population is exploding, and we have to think about new school sites,” said Board Member Jefferson.**

**“Not only that,” interjected Board Member Tanaka, “we need to get rid of a couple of our older facilities.”**

**“Well, obviously the place to do that is in a closed session,” said Board Member O’Reilly. “Otherwise we’re going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar.”**

*A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.*

**PRACTICE TIP:** Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

### Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”<sup>27</sup> The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>28</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>29</sup> That authority may be delegated to a subsidiary appointed body.<sup>30</sup>

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,<sup>31</sup> and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.<sup>32</sup> The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>33</sup> If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.<sup>34</sup>

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>35</sup>

- Q.** Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>36</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, “employee” specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>37</sup> Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.<sup>38</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>39</sup>

**"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**

**"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**

*This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

## Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>40</sup> on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.<sup>41</sup>

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

**PRACTICE TIP:** The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

**PRACTICE TIP:** Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>42</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>43</sup> The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

### Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>44</sup>

Public participation under the Rodda Act also takes another form.<sup>45</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>46</sup> The final vote must be in public.

### Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.<sup>47</sup>

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>48</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>49</sup>

**PRACTICE TIP:** Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

### Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.<sup>50</sup>

### License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>51</sup>

### Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>52</sup> Action taken in closed session with respect to such public security issues is not reportable action.



### Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>53</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>54</sup>

### Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.<sup>55</sup>

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.<sup>56</sup>





### Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,<sup>57</sup> consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,<sup>58</sup> hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,<sup>59</sup> discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations

concerning rates of payment,<sup>60</sup> and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.<sup>61</sup>

**PRACTICE TIP:** Meetings are either open or closed. There is nothing “in between.”<sup>62</sup>

### Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.<sup>63</sup>

**Q.** May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

**A.** *No, attendance in closed sessions is reserved exclusively for the agency’s advisors.*

### The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.<sup>64</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>65</sup> Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.<sup>66</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information received during a closed session regarding pending litigation,<sup>67</sup> though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.<sup>68</sup> In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.<sup>69</sup>

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.<sup>70</sup>

The interplay between these possible sanctions and an official’s first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

**“I want the press to know that I voted in closed session against filing the eminent domain action,” said Council Member Chang.**

**“Don’t settle too soon,” reveals Council Member Watson to the property owner, over coffee. “The city’s offer coming your way is not our bottom line.”**

*The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.<sup>71</sup> The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

**PRACTICE TIP:** There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

**ENDNOTES:**

- 1 California Government Code section 54962
- 2 California Constitution, Art. 1, section 3
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
- 4 California Government Code section 54957.1
- 5 California Government Code section 54954.5
- 6 California Government Code section 54954.2
- 7 California Government Code section 54954.5
- 8 California Government Code sections 54956.9 and 54957.7
- 9 California Government Code section 54957.1(a)
- 10 California Government Code section 54957.1(b)
- 11 California Government Code section 54957.2
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707
- 13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999)
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 17 “*The Brown Act*,” California Attorney General (2003), p. 40
- 18 California Government Code section 54956.9(g)
- 19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 20 Government Code section 54956.9(e)
- 21 California Government Code section 54957.1
- 22 California Government Code section 54956.8
- 23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 24 73 Ops.Cal.Atty.Gen. 1 (1990)
- 25 California Government Code sections 54956.8 and 54954.5(b)
- 26 California Government Code section 54957.1(a)(1)
- 27 California Government Code section 54957(b)
- 28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).
- 29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

- 31 California Government Code section 54957(b)(3)
- 32 88 Ops.Cal.Atty.Gen. 16 (2005)
- 33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).
- 35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 37 California Government Code section 54957
- 38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 39 California Government Code section 54957.1(a)(5)
- 40 California Government Code section 54957.6
- 41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
- 43 California Government Code section 54957.1(a)(6)
- 44 California Government Code section 3549.1
- 45 California Government Code section 3540
- 46 California Government Code section 3547
- 47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 48 California Education Code section 72122
- 49 California Education Code section 60617
- 50 California Government Code section 54956.96
- 51 California Government Code section 54956.7
- 52 California Government Code section 54957
- 53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354
- 54 California Government Code section 54957.8
- 55 California Government Code section 54962
- 56 California Health and Safety Code section 32106
- 57 California Government Code section 54956.75
- 58 California Government Code section 54956.81
- 59 California Government Code section 54956.86
- 60 California Government Code section 54956.87
- 61 California Government Code section 54956.95
- 62 46 Ops.Cal.Atty.Gen. 34 (1965)
- 63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

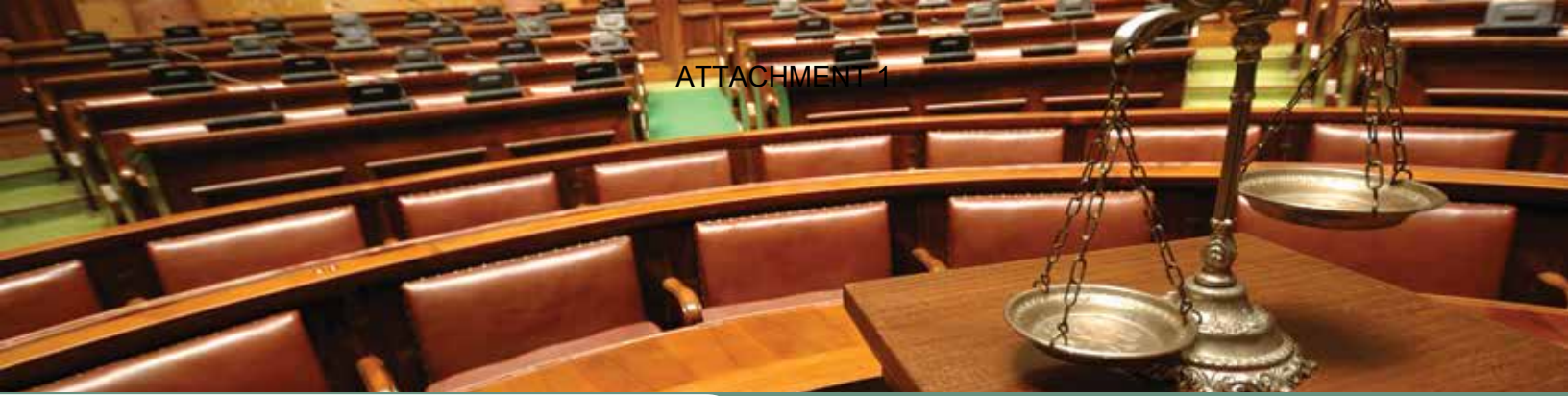
69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).





# Chapter 6

## REMEDIES

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# Chapter 6

## REMEDIES



Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.<sup>1</sup> Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;<sup>2</sup>
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendaized items are acted on by the governing body during a meeting.<sup>3</sup> The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,<sup>4</sup> the challenger must show prejudice as a result of the alleged violation.<sup>5</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>6</sup>

### Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.<sup>7</sup> Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body, clearly describing the past action and the nature of the alleged violation.<sup>8</sup> The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.<sup>9</sup> If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.<sup>10</sup>

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.<sup>11</sup> The unconditional commitment must be substantially in the form set forth in the Brown Act.<sup>12</sup> No legal action may thereafter be commenced regarding the past action.<sup>13</sup> However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.<sup>14</sup>

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.<sup>15</sup>

### Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

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**PRACTICE TIP:** A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

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It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>16</sup> Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>17</sup>

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

### Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>18</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>19</sup>

**PRACTICE TIP:** Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

### Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.<sup>20</sup>

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.<sup>21</sup>

"Action taken" is 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.<sup>22</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>23</sup> In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.<sup>24</sup>

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.<sup>25</sup> There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.<sup>26</sup>

### Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

### ENDNOTES:

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54956.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198
- 3 California Government Code section 54960.1 (b) and (c)(1)
- 4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319
- 5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561
- 6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118
- 7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)
- 8 Government Code Sections 54960.2(a)(1), (2)
- 9 Government Code Section 54960.2(b)





- 10 Government Code Section 54960.2(a)(4)
- 11 Government Code Section 54960.2(c)(2)
- 12 Government Code Section 54960.2(c)(1)
- 13 Government Code Section 54960.2(c)(3)
- 14 Government Code Section 54960.2(d)
- 15 Government Code Section 54960.2(e)
- 16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein
- 19 California Government Code section 54960.5
- 20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 21 California Government Code section 54959
- 22 California Government Code section 54952.6
- 23 61 Ops.Cal.Atty.Gen.283 (1978)
- 24 California Government Code section 54959
- 25 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at [www.cacities.org/opengovernment](http://www.cacities.org/opengovernment). A current version of the Brown Act may be found at [www.leginfo.ca.gov](http://www.leginfo.ca.gov).

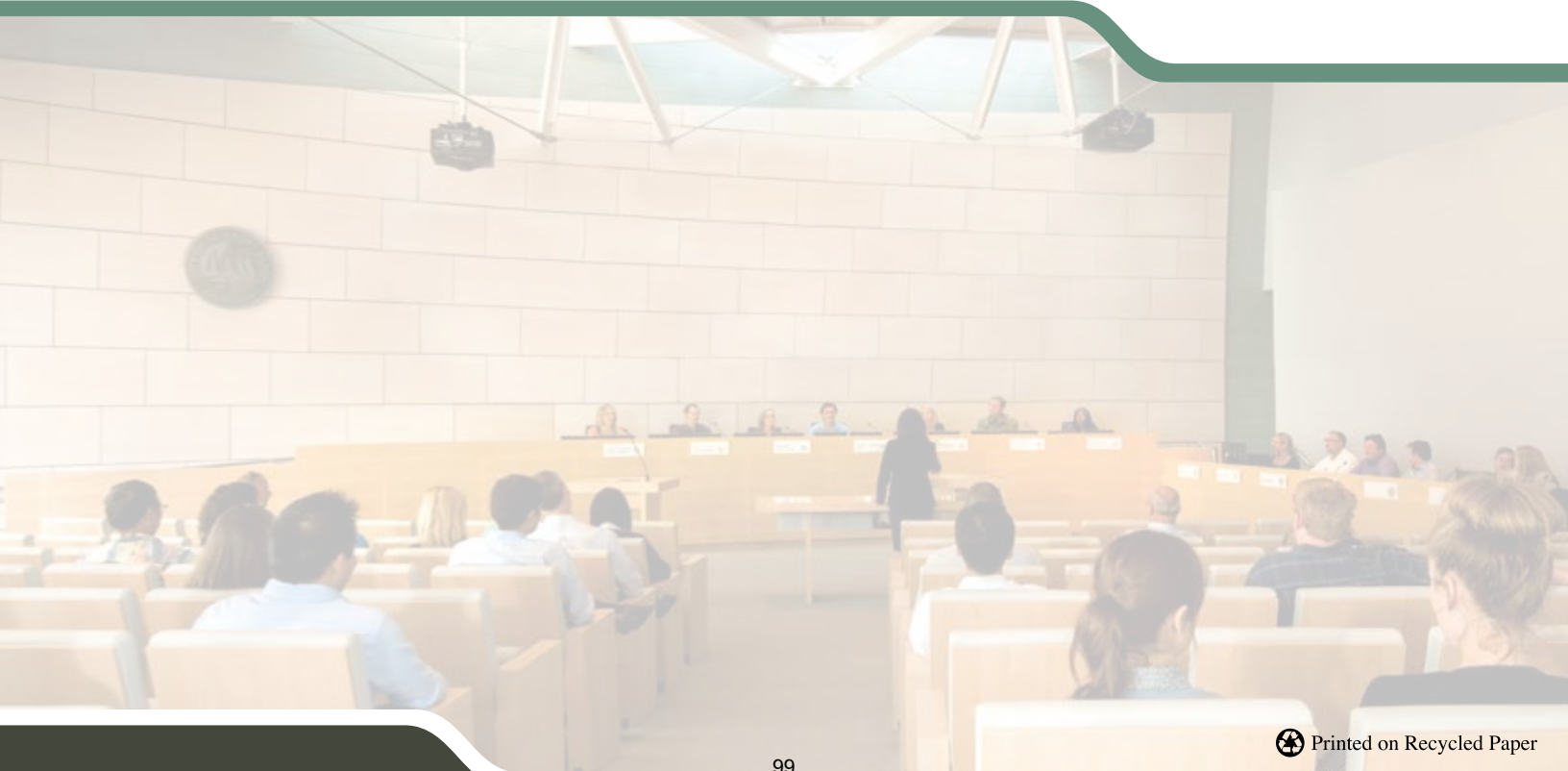
## ATTACHMENT 1



1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8200 | Fax: (916) 658-8240

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# The Ralph M. Brown Act: The People's Business and the Right of Access

Henry Castillo, Associate  
Best, Best & Krieger LLP  
California Special Districts Association  
February 25, 2020



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## Overview

- History of the Brown Act
- Purpose of the Brown Act
- Applications of the Brown Act
- Serial Meetings
- Rules Governing Meetings
- Teleconferencing
- Closed Session
- Remedies/Cure



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## The Ralph M. Brown Act

- In late 1951, San Francisco Chronicle reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on “Your Secret Government” that ran in May and June 1952.

The logo for the Institute for Budget & Finance (IBBk) is displayed in white text on a dark blue background.

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## The Ralph M. Brown Act

- Out of the series came a decision to push for a new state open meeting law.
- Assembly Member Ralph M. Brown carried legislation.
- The “Brown Act”, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws—such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

The logo for the Institute for Budget & Finance (IBBk) is displayed in white text on a dark blue background.

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## The Right to Access

- Two key parts of the Brown Act have not changed since its adoption in 1953:

“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.”

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## Purpose of Brown Act

To ensure that almost all aspects of the decision-making process of legislative bodies of local agencies are conducted in public and open to public scrutiny.

“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.” (Gov. Code 54950.)



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## Application

### *To whom does the act apply?*

- Local agencies
- Legislative bodies
- Meetings
- Persons elected to legislative bodies, even prior to assuming office



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## Application

- *Local Agency*
  - Means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency
- *Legislative Body*
  1. Governing body;
  2. Board, commission, committee created by formal action of the governing body;
  3. Private organizations (in limited circumstances).

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## The Key to the Brown Act

- All meetings shall be open and public except when the Brown Act authorizes otherwise.
- The Ralph M. Brown Act (Government Code sections 54950-54963).

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## Application



- What is a meeting?
- When is a meeting not a meeting?

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## Application

- *Meeting*

- Any gathering of a majority of the members at the same time and place to hear, discuss or deliberate upon any matter under their jurisdiction.
- No action needs to be taken for a meeting to occur; conversations between and among members of a legislative body about issues confronting the agency is sufficient.

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## Application

- *Not a Meeting*

- Individual contacts;
- Conferences and seminars;
- Community meetings;
- Purely social or ceremonial occasions;
- Attendance at standing committee meetings;
- Meetings with other legislative bodies – a majority of the governing body may attend as long as they do not discuss among themselves issues related to the agency.

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## Serial Meetings

- *Serial Meetings – Expressly Prohibited*
  - “Use of direct communication, personal intermediaries, or technological devices employed by a majority of the legislative body members in order to develop a collective concurrence as to action to be taken on an item by the legislative body is prohibited.”

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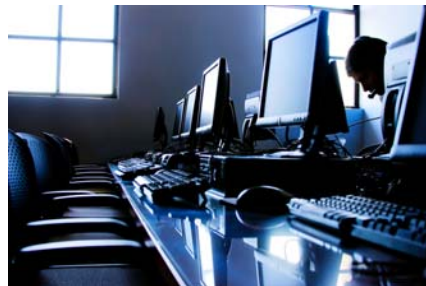


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## Serial Meetings

### *Ways Serial Meetings Can Happen*

- Personal Meeting
- Telephone
- Email
- Written Correspondence
- Use of Intermediaries
- Social Networking Sites such as Facebook and Twitter.



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## Social Media

- Engaging in discussion section of social media, article, etc.
- Meeting does not have to be a physical meeting
- Series of comments to a blog or news article

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## Serial Meetings

### *Elements of a Serial Meeting*

- Series of Communications
- Between Less Than a Quorum
- Taken As a Whole Involves a Majority
- Concurrence
  - Advances or Clarifies the Understanding of an Issue;
  - Facilitates an Agreement or Compromise Among Members;
  - Advances the Ultimate Resolution of an Issue.



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## Serial Meetings

### *Two types of Serial Meetings*

#### 1. Chain

- Member A speaks to Member B who speaks with Member C about a particular matter and in the process they all form a collective concurrence on a matter.

#### 2. Hub and Spoke

- An intermediary acts as a hub of a wheel with members relaying information back and forth to each other through the hub and in the process a majority of the legislative body develops a collective concurrence.




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## Serial Meetings

### *Serial Meeting Exceptions*

- While the Brown Act prohibits serial meetings, it also explicitly provides an exception for one-on-one communications by a non-member (i.e., staff) with members of the legislative body.
- Does NOT mean back and forth and sharing of views of different members
- Brown Act also allows communications to call or schedule a special meeting.




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## Serial Meetings



### E-mail Tips

- Refrain from replying to “All” in E-mails
- Do not take a position or make a commitment
- E-mail board members for info only
- Take caution
- Ensure compliance with law

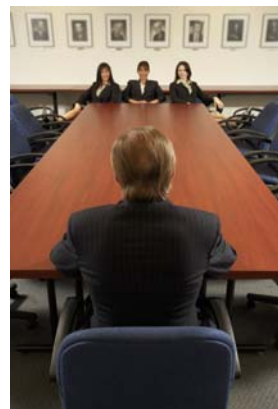
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## Rules Governing Meetings

- Regular meeting
- Special emergency meetings
- Adjourned meetings
- Public’s right to comment



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## Rules Governing Meetings

### *REGULAR MEETINGS - Agenda Requirements:*

- Post 72 hours prior to the meeting.
- Must include the time and location of the meeting.
- Must contain a brief general description of each item to be discussed or addressed, including closed session items.
- Notices available in alternative ADA formats and distributed in advance to those who request copies.



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## Special Circumstances at Meetings

- No public meeting shall be inaccessible to the disabled
- All public meetings shall meet the “protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990.”
- Agenda for the meeting needs to include “information regarding how, to whom, and when a request for disability related modification or accommodation, *including auxiliary aids or services may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.*”



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## Special Circumstances at Meetings

- For bilingual public speakers Brown Act requires that twice as much time to present during limited public comment
- Enough time to provide original statement in native language and translation
- Example: instead of 3 minutes should provide 6 minutes.

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## Rules Governing Meetings

### *SPECIAL MEETINGS - Agenda Requirements:*

- ⑩ Posted no later than 24 hours prior to the meeting.
- ⑩ Must include the time and location of the meeting.
- ⑩ Must contain a brief general description of each item to be discussed or addressed, including closed-door items.

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## Rules Governing Meetings

### *ADJOURNED MEETINGS - Agenda Requirements:*

- Not necessary to post a new agenda if legislative body adjourns meeting to a time and place in the order of adjournment that is less than 5 days as long as no additional business is transacted.



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## Rules Governing Meetings

### *EMERGENCY MEETINGS - Agenda Requirements:*

- ⑩ Requires severe impairment to public health and safety.
- ⑩ Absent a "dire emergency," at least one hour prior to the meeting, telephonic notice to media organizations.
- ⑩ If a dire emergency, notice given when members of the body are notified.
- ⑩ Generally, emergency meetings may not be held in closed session. The AG's office encourages bodies to give the public an opportunity to comment on closed-session items prior to the body adjournment into closed session.
- ⑩ Likely not encountered by Personnel Board, e.g.



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## Rules Governing Meetings

### *Distribution of Agenda Packet to Public*

In addition to posting an agenda, a local agency must also make the agenda packet available to the public when the materials are distributed to all or a majority of the legislative body, whichever is first.



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## Rules Governing Meetings

### *The Public's Right to Comment*

- ⑩ At every regular meeting, members of the public have the right to directly address the body on any item of public interest if that item is under the jurisdiction of the body.
- ⑩ For agenda items, the public must be given an opportunity to comment before or during the body's consideration of the item.
- ⑩ At special and emergency meetings, members of the public have the right to address the body about any item that is listed on the agenda.



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## Willful Interruptions

- The legislative body may remove persons from a meeting who willfully interrupt proceedings.
- Ejection is justified only when audience members actually disrupt the proceedings.
  - Silent and momentary Nazi salute directed towards mayor is not a disruption
  - City council may not prohibit “insolent” remarks by members of the public absent actual disruption
- § If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.



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## Rules Governing Meetings

### *Public Recording of Meetings*

- The public must be allowed to audio or video tape a meeting unless the agency can make a reasonable finding that the recording would constitute a persistent disruption of the proceedings
- Recordings of public meetings by the agency are public records

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## Rules Governing Meetings

*No action or discussion allowed for any item not listed on agenda except for:*

- Adding items by majority vote for emergency situations
- Adding Items of Subsequent Need. Adding items by 2/3 vote because of need for immediate action that came to the attention after the agenda is posted
- Consideration of items continued to another meeting within 5 calendar days

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## Rules Governing Meetings

- Brief responses to statements or questions from public
- Questions to staff for clarification of matters based upon public comments
- Brief announcements or reports on member's or staff's own activities
- Providing references or information to staff
- Asking staff to report back at a future meeting on any matter

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## Teleconferencing

- Teleconferencing may be used for any meeting of the legislative body.
- All votes by roll call.
- Agendas posted at all teleconference locations and teleconference locations identified.
- Teleconference locations must be accessible to the public.
- At least a quorum must be within the boundaries of the local agency.

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## Closed Sessions

**CONFIDENTIAL**

- Must be expressly authorized
- Must be briefly described in agenda
- Must verbally announce items
- If action is taken, may need to report to the public

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## Closed Sessions

- Real Property Transactions
- Litigation--Existing, Anticipated and Initiation
- Personnel Issues--Appointment, Performance, Evaluation, Discipline/Dismissal/Release
- Labor Negotiations
- Threats to Public Services of Facilities
- Joint Powers Authority
  - ⑩ Can disclose close session discussions with authorizing legislative body in closed session

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## Closed Session

- Brown Act Agenda Safe Harbor Language
- Requires specific wording for each specific instance
- CLOSED SESSIONS MUST BE ON THE AGENDA AND ONLY FOR SPECIFIC REASONS LISTED IN THE BROWN ACT
- Consult with your attorney for language requirements

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## The Confidentiality of Closed Session Discussions

- The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality
- Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.

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## Remedies for Disclosure

- Employee
  - Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section; up to dismissal
- Member of the Legislative Body
- Referral of the member who willfully disclosed confidential information in violation of this section to the Grand Jury

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## Remedies for Violations

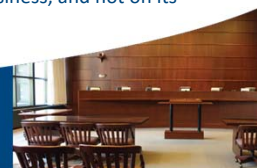
- Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act. Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:
- Those taken in substantial compliance with the law.
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.




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## Brown Act Cure

- The remedy is available to “[t]he district attorney or any interested person” who must first mail or fax a “cease and desist letter” “to the clerk of secretary of the legislative body being accused of the violation” “clearly describing the past action of the legislative body and nature of the alleged violation.”
- Such a demand must be made within nine months of an alleged violation.
- The legislative body has 30 days to respond to a cease-and-desist letter although a later response may still obviate subsequent suit, but will oblige the agency for the plaintiff’s attorneys’ fees and costs.
- Such a response may be “an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter” in substantially the form specified in section 54960.2, subdivision (c)(1)
- Such an unconditional commitment “shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.”

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Questions?





**California Special  
Districts Association**  
*Districts Stronger Together*

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BOARD OF PORT COMMISSIONERS

MARCH 18, 2020

STANDARD AGENDA ITEM 2

CITY OF VENTURA PROPOSAL  
TO BAN STYROFOAM

**VENTURA PORT DISTRICT  
BOARD COMMUNICATION**

**STANDARD AGENDA ITEM 2**  
Meeting Date: March 18, 2020

TO: Board of Port Commissioners  
FROM: Brian D. Pendleton, General Manager  
SUBJECT: City of Ventura Proposal to Ban Styrofoam

---

**RECOMMENDATION:**

That the Board of Port Commissioners receive a status report on the City of Ventura's direction to prepare an ordinance banning the use of Expanded Polystyrene (EPS) commonly called Styrofoam and campaign to reduce single-use plastics.

**SUMMARY:**

On February 24<sup>th</sup>, the Ventura City Council took the first steps towards eliminating EPS by authorizing the preparation of a new Ordinance that would require all takeout food packaging and single-use food ware in restaurants be recyclable or biodegradable. See attached City of Ventura report. City staff will be returning with recommendations for City Council to consider in the coming months.

Surfrider Ventura's "Plastic Free Ventura" campaign launched on Earth Day in 2018 as a response to the quantity of single-use plastic litter that volunteers are collecting at local beach cleanups. Some of the common items collected include EPS, straws, plastic and bioplastic cups and utensils. Scientists estimate that by 2050 there will be more plastic than fish in the ocean by volume.

**BACKGROUND:**

Assembly Bill "AB" 619, effective 2019, in part clarifies existing health code laws, ensuring that the public can bring reusable containers to restaurants for take-out.

AB 1884, effective 2019, requires that plastic straws at full service dine in restaurants are only provided upon request. The Environmental Health Department of the Ventura County Resource Management Association is responsible for enforcing this statewide plastic straw law throughout Ventura County.

The purpose of this report is to keep Harbor tenants informed of pending legislation that may impact business operations and campaign to reduce single use plastics. The City's proposed ordinance would become law, if passed, while the Surfrider's local campaign is a voluntary effort to encourage restaurants and consumers to choose reusable options whenever possible.

Staff will provide this information to Master and Village tenants and discuss it further at the next quarterly Harbor Village tenant meeting to better understand potential impacts of the City's proposed Ordinance to our Harbor business community.

**FISCAL IMPACT:**

Ventura Harbor tenant costs of replacing Styrofoam and single-use plastics with alternative recyclable materials for food and beverage containers.

**ATTACHMENTS:**

Attachment 1 – February 24<sup>th</sup> City Council Staff Report with City of Santa Barbara Draft Ordinance

AGENDA ITEM  
12B

Date: February 7, 2020

Council Action Date: February 24, 2020

**FROM:** Councilmember Christy Weir and Deputy Mayor Sofia Rubalcava**SUBJECT: POLICY CONSIDERATION** – Expanded Polystyrene Ban**SUMMARY**

Expanded Polystyrene, commonly called Styrofoam, is often used for single-use plates, cups, take-out food containers, and packing materials. It does not biodegrade, nor can it be recycled. It is a common source of litter, harmful to the marine environment, and can become toxic when heated.

**RECOMMENDATION**

Direct staff to draft an ordinance that would enact a citywide ban on Expanded Polystyrene by requiring that all takeout food packaging and single-use food ware in restaurants be recyclable in our local municipal recycling program or biodegradable.

**DISCUSSION/ANALYSIS**

Expanded Polystyrene (EPS) is a commonly used material for single-use food and beverage containers. EPS food and beverage containers cannot be recycled, do not biodegrade, and because they are light weight and brittle, they easily blow into the environment where they break into small pieces that are difficult to remove.

EPS has been banned to some degree in over 130 cities and counties in California due to its negative environmental impact and potential health impacts. Notable and local examples include a 1988 ban in Berkeley, a 2004 ban on vendors using EPS in Ventura County Parks, a 2014 ban in Ojai, and a 2018 ban in Santa Barbara. Recent EPS bans in our region have been implemented with little controversy, minimal negative impacts to local businesses, and without a large enforcement burden on City staff.

The City of Santa Barbara passed an EPS food and beverage container ban in 2018, along-side a separate plastic straw ban. City staff reported that while the straw ban received some opposition, the EPS ban was uncontroversial. Some restaurant owners



thought EPS was already banned, indicating awareness of the negative reputation of EPS. City staff anticipated some financial hardship for small restaurants to switch from EPS to more environmentally friendly products, so they included a financial hardship exemption for businesses that could not afford the switch. Only two businesses in Santa Barbara applied for the financial hardship exemption, indicating that financial hardship associated with switching to non-EPS alternatives was minimal.

Santa Barbara's enforcement of the EPS ban has been phased in slowly, with education from City staff serving as the most effective method to reach compliance. Santa Barbara gave a six-month grace period between the EPS ban and the start of enforcement. Santa Barbara also adopted an additional one-year education period, during which violators of the ban would not be cited if they worked with City staff to plan for phasing EPS out of their operations. City staff reported that the ban has been successful and has not unduly burdened the business community or City staff.

The manufacturing, shipping, use, and disposal of all single-use food and beverage containers has significant local and global environmental impacts. Banning EPS and replacing it with a different single-use item will not solve this larger problem, even if the replacement product is recyclable or biodegradable. However, EPS litter is one of most prevalent and hard-to-remove due to its weight and fragility. Banning EPS food and drink containers will help reduce our local litter issues and reduce EPS debris in the marine environment.

This ban would play an important role in reducing the environmental impact of single-use food and beverage containers in our city.

**ATTACHMENT:**

A Santa Barbara EPS Ordinance

ATTACHMENT 1  
**ATTACHMENT A**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE COUNCIL OF THE CITY  
OF SANTA BARBARA AMENDING TITLE 9 TO ADD  
CHAPTER 9.160 TO REGULATE EXPANDED  
POLYSTYRENE FOOD CONTAINERS AND  
PRODUCTS

**Section 1. Findings.**

A. The City of Santa Barbara ("City") pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

B. The City is required under state and federal law to implement policies and programs to protect unique coastal resources and environmentally sensitive habitat areas (California Coastal Act), reduce the amount of waste generated in the community that goes to landfills (AB 939), and prevent storm water runoff from polluting creek and ocean waters (National Pollutant Discharge Elimination System Permit Program and the State Municipal Storm Water Permitting Program); and

C. The Santa Barbara community is attractive to residents, businesses, and visitors due to a local economy and quality of life that is centered on a clean and healthy environment, including but not limited to, parks, public open spaces, creeks, estuary, tidelands and the ocean; and

D. The City Council received testimony and other information documenting the fact that EPS products often find their way into the local environment since EPS breaks down into smaller pieces and is so light that it floats in water and is easily carried by the wind, even when it has been disposed of properly; and

E. Numerous studies have documented the prevalence of EPS debris in the environment, including in storm drains and on beaches, negatively impacting the local environment and creating clean-up costs for the City; and

F. EPS can contain potentially harmful constituents such as phthalates, bisphenol A, styrene, vinyl chloride and flame retardants. Research is being conducted to determine whether water leaches these constituents out of plastic products, presenting a threat to the health of humans and wildlife. For example, styrene is a known hazardous substance and a suspected carcinogen and neurotoxin. Medical evidence and the Food and Drug Administration suggest that styrene may penetrate into food and drink stored in polystyrene containers which could potentially threaten the health of humans and wildlife; and

G. Recycling of EPS is currently not available through the City's franchise waste hauler or anywhere in the region and it is not financially feasible for the City to develop such a program; and

H. There are alternatives to EPS food containers available; and

I. It is in the City's interest to establish programs and services that reduce the amount of litter in the environment, in particular beach litter and marine pollution, which increase the quality of life from the City of Santa Barbara residents and visitors and protect local wildlife habitat.

THE CITY COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**SECTION 2.** Title 9 of the Santa Barbara Municipal Code is amended to add Chapter 9.160 to read as follows:

**9.160.010 Title.**

The title of this Chapter shall be "Regulating Expanded Polystyrene Food Containers and Products."

**9.160.020 Purpose.**

The purpose of these provisions is to promote:

A. The protection of the City's unique waterways and coastal resources including beaches, tidelands, creeks and riparian habitat.

B. To protect the public health, safety and general welfare.

C. Compliance with federal, state, and local laws regarding water quality and waste diversion.

D. A reduction in the amount of waste/debris in city parks, public open spaces, creeks, tidelands and the ocean, and the amount of material going to landfills.

**9.160.030 Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

A. **ASTM standard.** The standards of the American Society for Testing and Materials (ASTM) international standard D6400 or D6868 for biodegradable and compostable plastics, as those standards may be amended.

B. **Biodegradable.** A material that is compostable (separately defined) or the ability of organic matter to break down from a complex to a more simple form through the action of bacteria or to undergo this process.

C. **City facility.** Any building, structure or vehicle owned and operated by the City, its agents, agencies, and departments.

D. **City contractor.** Any person or entity that enters into an agreement with the City to furnish products or services to or for the City.

E. **Compostable.** Materials that have the ability to break down, or otherwise become part of usable compost (e.g., soil-conditioning material, mulch). Compostable disposable food containers must meet ASTM standards for compostable materials.

F. **Disposable food container.** A term interchangeable with "to go" packaging and "food packaging material" and means all containers that are used to hold prepared food or drinks. Disposable food containers include clamshells, bowls, plates, trays, cartons, and cups that are intended for single use, including, without limitation, food containers for takeout foods and/or leftovers from partially consumed meals prepared by food providers. This does not include single-use disposable items such as straws, cup lids, or utensils, nor does it include single-use disposable packaging for unprepared foods.

G. **Events promoter.** An applicant for any event permit issued by the City or any City employee(s) responsible for any City-organized event.

H. **Expanded polystyrene (EPS).** Blown expanded and extruded polystyrene or other plastic foams which are processed by any number of techniques including, but not limited to, fusion of monomer spheres (expanded bead plastic), injection molding, foam molding, and extrusion-blown molding (extruded foam plastic). Expanded polystyrene and other plastic foam is generally used to make cups, bowls, plates, trays, clamshell containers, meat trays, ice chests, shipping boxes and packing peanuts.

I. **Expanded polystyrene products.** Any item such as coolers, ice chests, cups, bowls, plates, clamshell containers, shipping boxes, or any other merchandise made from expanded polystyrene that is not wholly encapsulated or encased by a more durable material.

J. **Food provider.** Any person located within the City that is a retailer of prepared food or beverages for public consumption including, but not limited to, any store, supermarket, delicatessen, restaurant, shop, caterer or mobile food vendor.

K. **Person.** An individual, business, event promoter, trust, firm, joint stock company, corporation, nonprofit, including a government corporation, partnership, or association.

L. **Prepared food.** Food or beverages, which are served, packaged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or otherwise prepared within the City. Prepared food does not include raw, butchered meats, fish and/or poultry sold from a butcher case or similar food establishment.

M. **Recyclable.** Materials that can be recycled consistent with the requirements of Chapter 7.16, including, but not limited to, aluminum, tin and bi-metal cans, clear and colored glass containers, high density polyethylene (HDPE), polyethylene terephthalate (PET), clear or rigid polystyrene, corrugated cardboard and mixed paper.

N. **Vendor.** Any store or business which sells or offers goods or merchandise, located or operating within the City, including those referenced in the definition of "food provider."

**9.160.040 Expanded polystyrene disposable food containers prohibited.**

A. It shall be unlawful for any food provider within the City to provide prepared food in or provide separately any disposable food container made from expanded polystyrene, except as exempted in Section 9.160.070.

B. Disposable food containers made from expanded polystyrene are prohibited from use in all City facilities.

C. City contractors in the performance of city contracts and events promoters may not provide prepared food in disposable food containers made from expanded polystyrene.

**9.160.050 Required biodegradable, compostable, or recyclable disposable food containers.**

A. All food providers within the City utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

B. All City facilities utilizing disposable food containers shall use biodegradable, compostable or recyclable products.

C. City contractors and events promoters utilizing disposable food containers shall use biodegradable, compostable, or recyclable products while performing under a City contract or permit.

**9.160.060 Prohibited sales.**

It shall be unlawful for any vendor or events promoter in the City to sell or otherwise provide any expanded polystyrene product which is not wholly encapsulated or encased within a more durable material, except as exempted in Section 9.160.070. This specifically includes, but is not limited to, cups, plates, bowls, trays, clamshells and other products intended primarily for food service use, as well as coolers, containers, ice chests, shipping boxes, packing peanuts, or other packaging materials.

**9.160.070 Exemptions.**

A. A food provider or other vendor may apply for an exemption from the requirements set forth in Section 9.160.040(A) under the following circumstances:

1. Food Provider - Financial Hardship or Practical Difficulty. The City Finance Director or designee may exempt a food provider from the requirements set forth in Section 9.160.040(A) for up to one-year if the food provider applies for an exemption from the City Finance Director showing, in writing, that this chapter would create an undue hardship or practical difficulty as evidenced by no alternatives being available or such alternatives are not affordable to the food provider.

2. Public Health and Safety. Exemptions to allow for the sale or provision of expanded polystyrene products may be granted by the Finance Director or

designee, if the food provider or vendor can demonstrate, in writing, a public health and safety requirement or medical necessity to use the product.

B. Procedures for Applying for an Exemption.

1. Application Materials. An exemption application shall include all information necessary for the Finance Director or designee to make a decision, including but not limited to documentation showing factual support for the claimed exemption. The Finance Director or designee may require the applicant to provide additional information.

2. The Finance Director or designee may approve the exemption application in whole or in part, with or without conditions.

3. The Finance Director or designee shall put the decision to grant or deny the exemption in writing and the decision shall be final.

4. An exemption granted under Subsection A shall not be renewed.

C. The following foods or products are exempt from the provisions of this Chapter:

1. Foods prepared or packaged outside the City and sold inside the City.

2. Raw meat, fish and other raw food trays.

3. Products made from expanded polystyrene which are wholly encapsulated or encased by a more durable material. Examples include surfboards, life preservers, and craft supplies which are wholly encapsulated or encased by a more durable material, and coolers encased in hard plastic.

4. Construction products made from expanded polystyrene are exempted from this Chapter if the products are used in compliance with Title 22, Environmental Policy and Construction, and Chapter 22.87, Stormwater Management for Development and Redevelopment Projects, and used in a manner preventing the expanded polystyrene from being released into the environment.

5. During a locally declared emergency, the City, emergency response agencies operating within the City, users of City facilities, and food providers shall be exempt from the provisions of this Chapter.

6. Expanded polystyrene packaging products which have been received from sources outside the City may be reused in order to keep the products out of the waste stream.

**9.160.080 Penalties and enforcement.**

A. The presence of non-recyclable plastic food containers on the premises of a food provider shall constitute a rebuttable presumption that such packaging is being dispensed.



B. Violations of this Chapter shall be enforced as follows:

1. For the first violation, upon a determination that a violation of this Chapter has occurred, City shall issue a written warning notice to the food provider which will specify the violation and the appropriate penalties in the event to of future violations.

2. Thereafter, any person violating or failing to comply with any of the requirements of this Chapter shall be subject to remedies specified pursuant to Chapters 1.25 and 1.28 of this Code.

3. Each and every sale or other transfer of non-recyclable plastic food packaging shall constitute a separate violation of this Chapter.

4. The City Attorney may seek legal, injunctive, or other equitable relief to enforce this Chapter.

C. The remedies and penalties provided in this Chapter are cumulative and not exclusive of other remedies and penalties available under other provisions of applicable law.

**SECTION 3.** This ordinance shall take effect on the 31st day following its adoption, but shall not become operative until 2:01 a.m. on January 1, 2019.