



AGENDA

REGULAR MEETING

* * *

TRAILS AND LANDSCAPING COMMITTEE

MONDAY, APRIL 10, 2006

7:00 p.m.

*Meeting Room, Clayton Community Library
6125 Clayton Road, Clayton, CA*

COMMITTEE MEMBERS

Candace Bass	JoAnn Caspar
Victor Geisler – Vice Chair	Ben Jay
Howard Kaplan	Jerry Kosel
Linda Pinder	Dan Richardson - Chair
Janise Trezise	Bill Vineyard
Memory Woodard	Jerry Zimmerman

Vice Mayor Bill Walcutt (Ex-Officio)

- A complete packet of information containing staff reports and exhibits related to each item is available for public review in City Hall located at 6000 Heritage Trail on Monday prior to the Committee meeting.
- Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton; and 4) City Website at www.ci.clayton.ca.us
- If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at (925) 673-7304.

*** TRAILS AND LANDSCAPING COMMITTEE ***

April 10, 2006

1. CALL TO ORDER & ROLL CALL – Chairman Richardson.

2. CONSENT CALENDAR

Consent Calendar items are typically routine in nature and are considered for approval by the Committee with one single motion. Members of the Committee, Audience, or Staff wishing an item removed from the Consent Calendar for purpose of public comment, question or input may request so through the Chair.

(a) Information Only

1. User's Guide to the Ralph M. Brown Act, Open & Public Meetings.

(b) Approval of Action Minutes from the regular meeting of March 27, 2006.

3. PUBLIC COMMENTS

Citizens may address the Committee on items within the Committee's jurisdiction, (which are not on the agenda) by completing a speaker card and forwarding it to the Chair. To assure an orderly meeting and an equal opportunity for everyone, each speaker is limited to 3 minutes, enforced at the Chair's discretion. When one's name is called by the Chair, the speaker shall advance to the public podium and adhere to the time limit. In accordance with State Law, no action may take place on any item not appearing on the posted agenda. The Committee may respond to statements made or questions asked, or may request Staff to report back at a future meeting concerning the matter.

Public comment and input on Public Hearing, Action Items and other Agenda Items will be allowed when each item is considered by the Committee.

4. ACTION ITEMS

(a) Discussion of current and preferred Maintenance Standards for Landscape District.

(b) Consideration of date and locations for Committee field tour of Landscape Maintenance District.

(c) Establish schedule for Committee Member reports at City Council meetings.

(d) Continued discussion and review of the scope of responsibilities for the existing Citywide Landscape Maintenance District (CFD 1997-1).

(e) Continued discussion of possible Public Education and Awareness Programs and opportunities.

5. CORRESPONDENCE – review of incoming and outgoing correspondence.

6. COMMITTEE ITEMS – limited to requests and directives for future meetings.

7. ADJOURNMENT – the next regular Committee meeting is Monday, April 24, 2006.

#

A user's guide to the Ralph M. Brown Act

*"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...."*

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III

Agenda Date: 04-10-06

Agenda Item: 2(a)

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This guide is a joint project of organizations that represent diverse views and constituencies—but share a common interest in the open meeting laws for local governments.

One goal with this publication is to put the Ralph M. Brown Act in lay language, so it can be readily understood by local officials, by the public and by the news media.

Another goal is to identify problem areas in an effort to reduce controversy over the Act. As a consequence, we have tried not only to cover all aspects of the Act, but to also pay extra suggestions on how to minimize potential problems; these are primarily practical ways for officials to stay out of hot water.

However, this guide is not intended to provide legal advice, and it should not be taken as a legal standard by which to judge the propriety of official conduct. We are confident that no court would lend it such authority, and it is only in that confidence that the guide has been ventured as a common project.

A public agency's legal counsel is responsible for advising its staff, board or council on Brown Act requirements and prohibitions, and should always be consulted when issues arise.

To lessen confusion, we have adopted a format in which:

- ◆ Most text will look like this.
- ◆ *But suggestions will be italicized.* (I)
- ◆ And for hypothetical examples, the typeface will look like this. (T)

*The League thanks the following attorneys for their work on this update to the original guide.
The League also thanks the organizations listed on the back cover for their contributions.*

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"THE PEOPLE DO NOT YIELD THEIR SOVEREIGNTY"

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 of 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 a bill and Modesto Assemblyman Ralph M. Brown agreed to carry it. The bill passed the Legislature and was signed into law in 1953 by Governor Earl Warren.

The Ralph M. Brown Act (the "Brown Act"), as it is known, 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.

Ralph Brown served in the Assembly for 19 years starting in 1942, the last three years as its Speaker. He then became an appellate court justice. But, he is best known for the open meeting law, which carries his name.

The basic law

Two key parts of the Brown Act have not changed since its passage. One is the intent section with which it begins:

"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 their 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."¹

Not all intent language in statutes has an impact on the judiciary. But the courts have leaned on the intent section of the Brown Act to narrowly construe exceptions to the law and liberally construe provisions, which further openness and access.²

That opening is the soul of the Brown Act. Its heart comes later, a section that declares:

"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."³

That one sentence is by far the most important of the entire Brown Act, and it is the basis for the next five chapters.

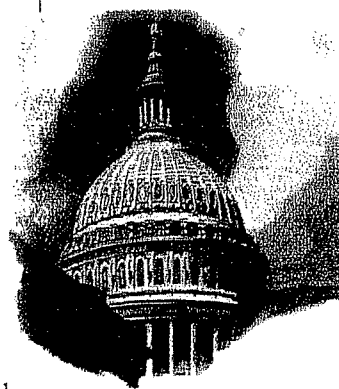
Change and expansion

Although these two key provisions have remained intact, very little else in the Brown Act has. Changes have been adopted in numerous sessions of the Legislature. Examples include requirements for agendas and public notice, creation of new exceptions, and addition of a mechanism to invalidate certain actions if the Brown Act has been violated.

Over the years, a number of appellate court decisions and Attorney General Opinions have interpreted key elements of the Brown Act, such as what constitutes a "meeting." In 1994, many of these holdings were enacted into law. In addition, the 1994 changes extensively revised provisions about sessions that can be closed to the public.

The Brown Act now covers virtually every type of local government body, elected or appointed, decision-making or advisory, permanent or temporary. Even some types of private organizations are covered.

Similarly, meetings subject to the Brown Act are not limited to formal gatherings. They also include any communication or device by which a majority develops "a collective concurrence as to action to be taken."



Chapter 1: Introduction

California has concluded more is to be gained than lost by the public meeting process.

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III

Limitations

Except for closed sessions, the Brown Act requires all aspects of the decision-making process by legislative bodies—including discussion, debate and acquisition of information—to be conducted in public.

But the law is limited to multi-member government bodies, and only they can violate its provisions. The Brown Act does not apply to individual decision-makers. It also exempts *ad hoc* advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body. The law does not restrict local agency staff or employees except to the extent that they act as a conduit for collective action or discussion by the members.

The law on the one hand recognizes the need of individual legislators 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.

The Brown Act allows a legislative body to adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech. Otherwise, individual citizens, lobbyists, and members of the news media possess the right to attend, broadcast and participate in public meetings.

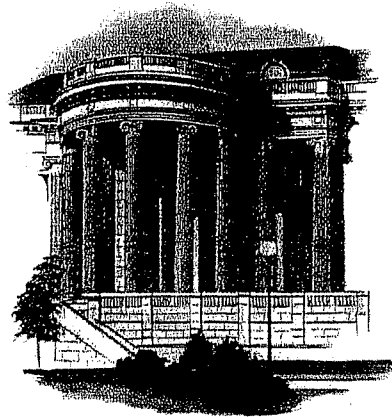
Controversy

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

Public officials,⁴ on the other hand, 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 unnatural. The techniques that serve so well in business—the working lunch, the private lobbying and compromises, the slow evolution of a project or decision—are no longer possible. Closed meetings can be more efficient; they eliminate grandstanding and promote candor.

As a matter of public policy, California has concluded more is to be gained than lost by the public meeting process. Government behind closed doors may well be efficient and business-like. But invisible government is often unresponsive. It is invariably distrusted.

The Brown Act has without question had a major impact on the way public bodies conduct business. Closed door meetings are now the exception.



Notes

1. California Government Code section 54950
2. In reviewing these endnotes, keep in mind that the Brown Act itself has the greatest force and effect. Next in order are appellate court decisions, which interpret the Brown Act and if published serve as precedent for trial courts. Published opinions of the Attorney General do not have the force of law but are persuasive to the courts; letter opinions of the Attorney General are usually narrower in scope and less influential.
3. California Government Code section 54953(a)
4. As used in this publication, "public official" includes both elected and appointed officials.

Chapter 2: Meetings

"ALL MEETINGS OF ..."

For most of its history, the Brown Act referred to various kinds of meetings but deferred to the courts and the California Attorney General to determine whether a particular gathering was a "meeting." That ended in 1994, when the term "meeting" was first defined in the Brown Act. There was no change in the clear distinction between a legislative body member's contacts with individuals on the one hand and collective gatherings of a legislative body majority on the other hand. With few exceptions, the Brown Act applies only to collective gatherings.

Specifically, the Brown Act defines a meeting as:

"... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."¹

Thus, the term "meeting" is not limited to gatherings at which action is taken but also includes deliberative gatherings as well.

Except for teleconferencing discussed below, the Brown Act specifically prohibits "any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body."²

After the above very inclusive language, the Brown Act creates six exceptions:³

◆ INDIVIDUAL CONTACTS

The first exception is 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 by stages what cannot be done in one step. For example, a series of individual contacts that leads to a "collective concurrence" 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. A majority of members, however, 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.

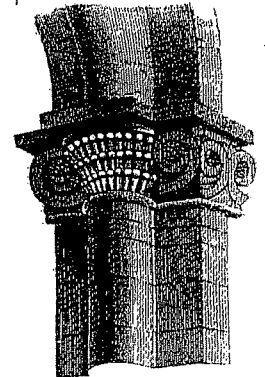
◆ COMMUNITY MEETINGS

The third exception allows a legislative body majority to attend an open and publicized meeting organized by another organization to address a topic of local community concern. Again, a majority 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. 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 the majority engages in a collective deliberation process outside a scheduled meeting of the body. In the above example, a discussion by the majority encouraging citizen input on the issues would be permissible. A majority discussion about each member's support of or opposition to such an ordinance would violate the Brown Act.



The term "meeting" is not limited to gatherings at which action is taken but also includes deliberative gatherings.

Chapter 2: Meetings

◆ OTHER LEGISLATIVE BODIES

In 1997 the fourth exception was expanded to allow a legislative body majority to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.⁴ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council majority 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.

In response to a 1996 opinion of the Attorney General, the Legislature created a fifth exception. That 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,⁵ meaning that they cannot speak or otherwise participate in the meeting.

◆ SOCIAL OR CEREMONIAL EVENTS

Finally, an exception permits a legislative body majority 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 local agency.

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 attends the function, but whether business of a specific nature within the subject matter jurisdiction of the local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

Collective briefings

None of these six 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 involving a majority of the body in the same place and time must be open to the public and satisfy the notice and agenda requirements of meetings.

Retreats or workshops of legislative bodies

Formerly, there was disagreement among local agency attorneys whether the Brown Act applied to retreats or workshops of legislative bodies. The consensus today is that such gatherings by a majority of legislative body members are covered. This is the case whether the retreat or workshop focuses on long-range agency planning, discussion of critical local issues or on team building and group dynamics.⁶

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. Such meetings at any one time involve only a portion of a legislative body, but eventually involve a majority.

There may be nothing improper about the substance of a serial meeting. The problem is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision making.

The serial meeting may be a daisy-chain in which Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum and collective concurrence has been established. A hub-and-spoke process in which, for example, a local agency attorney (the hub) telephones members of a redevelopment agency (the spokes) one by one for a decision on a proposed action,⁷ or in which a chief executive briefs board members prior to a formal meeting and, in the process, reveals information about the members' respective views, also violates the Brown Act.

A member has the right, if not the duty, to meet with constituents to address their grievances. That member also has the right to confer with a colleague about local agency business. But if in that process a "collective concurrence as to action to be taken" is reached among a majority, the Brown Act has been violated. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.⁸

On the other hand, a unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.⁹ Such a memo, however, may be a public record.¹⁰

A hub-and-spoke process in which a chief executive briefs board members prior to a formal meeting and reveals information about the members' respective views violates the Brown Act.

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

Well, I dunno," replied Board Member Adams. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Baker and Charles 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 done anything wrong. But the board member may have violated the Brown Act by hearing about the positions of other board members. The prudent course is to try to stop lobbyists, staff and news media from 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."

The Brown Act may or may not prohibit such briefings. The Attorney General concludes that staff briefings are per se illegal.¹¹ That point of view notwithstanding, the consensus among local agency attorneys is that staff briefings of legislative body members are allowed if staff is not used as a conduit for achieving collective concurrence, and if during the briefing staff does not disclose the views and positions of other members. Members should be cautious about discussions about local agency business with developers, advocates, or opponents and proponents on issues if such discussions could achieve a collective concurrence.

"Thanks for the information," said Council Member Smith. "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. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the member should not answer. A one-on-one meeting that involves a member of a legislative body takes a step toward collective concurrence if either person reveals or discusses the views of other members.

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 are meetings under the Brown Act.¹² A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

Thursday, 11:30 a.m. As they did every week, the board of directors of 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 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. But it is the kind of situation that 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.

Technological conferencing

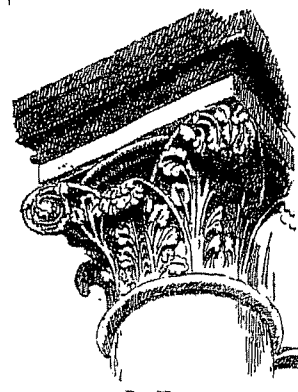
The Brown Act has been amended in 1994, 1997 and 1998 to allow local agencies to use information age technologies to conduct meetings.¹³

The Brown Act now specifically allows a legislative body to use any type of teleconferencing to receive public comment, testimony, to deliberate or conduct a closed session.¹⁴

"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."¹⁵ 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 specific requirements:¹⁶

- Teleconferencing may be used for all purposes during any meeting.
- At least a quorum of the legislative body shall participate from locations within the local agency's jurisdiction.
- Additional teleconference locations may be made available for the public.

Chapter 2: Meetings



The Brown Act has been amended to allow local agencies to use information age technologies to conduct meetings.

Chapter 2: Meetings

Before teleconferencing a meeting, legal counsel for the local agency should be consulted.

- Each teleconference location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at each teleconference location.
- Each teleconference location must be accessible to the public.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location.
- All votes must be by roll call.

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

Location

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.¹⁷

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is to:

- ♦ Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party.
- ♦ Inspect real or personal property, which cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property.
- ♦ Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice.
- ♦ Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or 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.

- ♦ Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.¹⁸

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.¹⁹ A 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.²⁰

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 which have requested notice of meetings must be notified of the designation by the most rapid means of communication available.²¹

Notes:

1. California Government Code section 54952.2(a)
2. California Government Code section 54952.2(b)
3. California Government Code section 54952.2(c)
4. California Government Code section 54952.2(c)(4)
5. California Government Code section 54952.2(c)(6)
6. "The Brown Act" California Attorney General, 1994, p. 9
7. *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal. App. 3d 95, 214 Cal. Rptr. 561
8. *Common Cause v. Stirling* (1983) 147 Cal. App. 3d 518, 195 Cal. Rptr. 163
9. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
10. California Government Code section 54957.5(a)
11. "The Brown Act" California Attorney General, 1994, p.12
12. California Government Code section 54952.2; 43 Op. Cal. Att'y Gen. 36 (1964)
13. California Government Code section 54953(b)
14. California Government Code section 54953(b)(1)
15. California Government Code section 54953(b)(4)
16. California Government Code section 54953
17. California Government Code section 54954(b)
18. California Government Code section 54954(b)(1)-(7)
19. California Government Code section 54954(c)
20. California Government Code section 54954(d)
21. California Government Code section 54954(e)

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“...THE LEGISLATIVE BODY OF A LOCAL AGENCY...”

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

The Brown Act defines “legislative body” broadly¹ to include:

- ♦ The governing body of a local agency or any other local body created by state or federal statute, such as an air pollution control district or housing authority.²
- ♦ Advisory committees, such planning commissions and other subsidiary bodies. Also covered are citizen volunteer groups, task forces, and “blue ribbon committees” created by formal action of the governing body. However, there is an exception for advisory committees consisting solely of less than a quorum of the legislative body (see discussion under “What is not a ‘legislative body’ for purposes of the Brown Act?” below).³

A subset of the advisory committee is the “unitary” body. The less-than-a-quorum exception for advisory committees can be used by two or more bodies to create an entirely separate advisory group—which may or may not be subject to the Brown Act.

In one 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 “unitary body” subject to the Brown Act. Had the two committees remained separate, and met only to exchange information, they would have been exempt from the Brown Act.⁴ (See discussion of *ad hoc* committees below.)

The prudent assumption 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.

- ♦ Standing committees, which have either: 1) a continuing subject matter jurisdiction or 2) a meeting fixed by charter, ordinance, resolution, or other formal action of the legislative body.⁵ Standing committees comprised of less than a quorum of the governing body are covered by the Brown Act. For example, if a governing

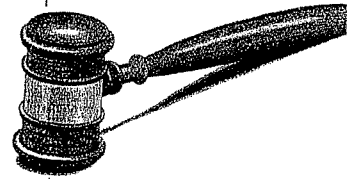
body creates long-term committees on budget and finance, or public safety, those are standing committees subject to the Brown Act.

- ♦ Any private organization created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity is covered.⁶ This includes nonprofit corporations created by local agencies. However, if a local agency contracts with a private firm for a service (for example, data processing or providing food services), the private firm is not covered by the Brown Act. Other private organizations receiving public funds are subject to the Brown Act if two elements are present: (1) receipt of public money from a local agency and (2) the presence on the organization's governing body of a member of the legislative body appointed as a full voting member by the local agency.⁷ However, if a member of a legislative body sits on the board of a private organization as a private citizen rather than in his or her official capacity, the board will not be subject to the Brown Act.⁸

Suppose a chamber of commerce is funded in part by a city and the mayor sits on the chamber's board of directors. If the mayor was appointed to that position by the city council, the chamber is subject to the Brown Act and must hold open and public meetings. If the chamber independently appoints the mayor to its governing board, or if the mayor attends chamber meetings only in an advisory capacity, the chamber is probably not subject to the Brown Act.

Another is an auxiliary organization created to run a community college bookstore or cafeteria. (However, if the college *contracts* with a private firm to operate its bookstore or provide food services, the firm is not covered by the Brown Act.)

- ♦ Special district hospital boards. A lessee assuming “material authority” over a special district hospital is not covered by the Brown Act.⁹ However, this provision only applies to leases created after January 1, 1994.
- ♦ Newly elected members of legislative bodies.



Chapter 3: Legislative Bodies

Individual decision makers are not covered by the Brown Act.

In 1994, the Brown Act was extended to cover newly-elected members of legislative bodies who have not yet assumed office.¹⁰ This amendment requires newly elected individuals to conform their conduct to the requirements of the Brown Act. For purposes of enforcement, these persons are to be treated as if already in office. Thus, meetings between incumbents and newly-elected members could constitute a majority subject to the Brown Act. Even a meeting between two outgoing members and their successors would violate the law.

What is not a "legislative body" for purposes of the Brown Act?

- ◆ An *ad hoc*, advisory committee composed solely of less than a quorum of the legislative body is exempted from the Brown Act.¹¹ The exception covers advisory committees that are *ad hoc* in nature — meaning that they serve a limited or single purpose, are not perpetual, and are to be dissolved once their specific task is completed. An example would be an advisory committee composed of less than a quorum created to interview candidates for a vacant position.

It can be difficult to determine whether a committee falls into the category of a standing committee or an exempt ad hoc committee. Suppose a subcommittee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration? Is it a standing committee or an exempt ad hoc committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the group persists long enough to have "continuing jurisdiction."

- ◆ Committees not created by formal action of the legislative body are not covered. For example, groups advisory to a single decision-maker appointed by a city manager or single city council member or otherwise not created by formal action of the legislative body are not covered by the Brown Act.¹² It is thus

possible that a committee advising to a county superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the county board of education, would be covered.¹³

- ◆ Individual decision makers are not covered by the Brown Act. For example, an employee's administrative hearing with a manager regarding discipline is not a meeting.¹⁴
- ◆ County central committees of political parties are also not Brown Act bodies.¹⁵

Notes

1. California Government Code sections 54951 and 54952; *Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545, 152 Cal. Rptr. 506
2. California Government Code section 54952(a)
3. California Government Code section 54952(b); 79 Op. Cal. Att'y Gen. 69 (1996)
4. *Joiner v. City of Sebastopol* (1981) 125 Cal. App. 3d 799, 178 Cal. Rptr. 299
5. California Government Code section 54952(b)
6. California Government Code section 54952(c)(1)(A)
7. California Government Code section 54952(c)(1)(B); see also *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App. 4th 287, 81 Cal. Rptr. 2d 456
8. 67 Op. Cal. Att'y Gen. 487 (1984)
9. California Government Code section 54952(d)
10. California Government Code section 54952.1
11. 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, 25 Cal. Rptr. 2d 148
12. 56 Op. Cal. Att'y Gen. 14 (1973)
13. 56 Op. Cal. Att'y Gen. 14 (1973)
14. *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal. App. 3d 870, 105 Cal. Rptr. 855
15. 59 Op. Cal. Att'y Gen. 162 (1976)

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“...SHALL BE OPEN AND PUBLIC...”

There are two essentials for an open and public meeting. One is effective notice; whether the meeting is open or not is academic if no one knows about it. The other is an agenda which adequately describes the items to be considered.

Every meeting of the legislative body of a local agency—including advisory committees, commissions or boards, as well as standing committees of legislative bodies—must have public notice and a written agenda. The specifics vary by type of meeting.

Regular meetings

Legislative bodies must set the time and place for their regular meetings by ordinance, resolution, bylaws or similar formal rule for conducting business. Advisory committees or standing committees may but need not require regular meetings by their own rules. Meetings of these latter two categories of bodies for which an agenda is posted 72 hours in advance are considered a regular meetings.¹

An agenda must be posted at least 72 hours before a regular meeting in a location “freely accessible to members of the public.” It shall 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.”²

Brief descriptions of agenda items were first required in 1987. A letter placed in the *Senate Daily Journal* explained that the intent was for agendas to “contain sufficient descriptions . . . to enable members of the general public to determine the general nature of subject matter of each agenda item, so that they may seek further information on items of interest. It is not the purpose of this bill to require agendas to contain the degree of information required to satisfy constitutional due process requirements.” There remained some disagreement over the detail necessary in an agenda. The 1994 amendments revised the section to specify that a brief description “generally need not exceed 20 words.”³

With three exceptions (see the end of this chapter), no action or discussion can take place on an item not on the posted agenda.⁴ However, there can be brief responses to questions, or some

other limited, routine comments, also as discussed at the end of this chapter.

Special meetings

The presiding officer or a majority of a legislative body, including an advisory or standing committee, may call a special meeting at any time. For the majority to act, there is implied authority for them to communicate to determine if they want to call a special meeting.

Written notice must be sent, and received by, 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 which has requested such notice in writing.⁵

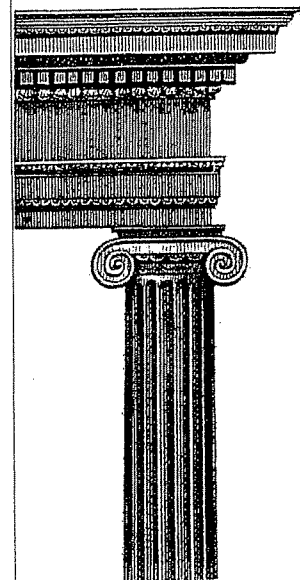
The notice must state the time and place of the meeting, and all business to be transacted or discussed. It must be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. Media notice must be delivered by personal delivery or any other means which ensures receipt, at least 24 hours before the time of the meeting. The body cannot consider business not in the notice.⁶

Adjourned meetings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment. If no time is stated, the meeting is continued to the hour for regular meetings. Less than a quorum may so adjourn a meeting; and if no member of the legislative body is present, the clerk or secretary may adjourn the meeting.⁷ 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.⁸ 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.⁹

Closed sessions

Part or all of a regular or special meeting, or one which has been adjourned, may be closed to the public under special conditions (discussed in Chapter 6). But notice is still required, even if no action is contemplated.¹⁰



Chapter 4: Notices and Agendas

The Brown Act provides a series of “safe harbor” examples—so called because descriptions that substantially comply with them cannot be challenged as not accurately describing the action. (These examples appear in Section 54954.5 in the text at the end of this guide.)

The legislative body in a closed session can consider only matters covered in its agenda descriptions. After closed session, the legislative body must reconvene to open session and may be required to disclose actions taken. The requirement for a public report of action varies depending largely on whether the action of the agency renders the matter final or whether action of a third party is necessary. When announcements are required, they may be made at the location of the closed session announced in the agenda, or where the agency holds its open sessions, as long as the public is allowed to be present.¹¹

Continued hearings

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.¹²

Emergency meetings

An agency can hold an emergency meeting when prompt action is needed due to the actual or threatened disruption of public facilities. An “emergency situation” exists if the legislative body determines a work stoppage, crippling disaster, or other activity severely impairs public health, safety or both.¹³

The special meeting provisions apply to emergency meetings, except for the 24-hour notice. News media which 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.

The legislative body may not meet in closed session during emergency meetings.

Minutes of emergency meetings, a list of

persons notified or attempted to be notified, a copy of the roll call vote, and any actions taken must be posted for a minimum of 10 days in a public place as soon after the meeting as possible.¹⁴

It behooves the news media to make sure written requests are on file for notification of special or emergency meetings. The written requests should also be periodically renewed—especially if phone numbers or addresses have been changed. 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.

Mailed agenda upon written request

The legislative body, or its designee, shall mail a copy of the agenda or copies of all the documents in the agenda packet, to any person who has filed a written request for such materials. The mailed copies of the agenda, or agenda packets, shall be mailed at the time the agenda is posted.

A request for notice is valid for one calendar year and renewal requests must be filed 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.¹⁵

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions,¹⁶ however, they are generally consistent with the Brown Act. An item is apparently void if not posted.¹⁷ A school district must also adopt regulations to make sure the public can place matters affecting district business on meeting agendas, and to address the board on those items.¹⁸

Notice requirements for tax or assessment meetings and hearings

The Brown Act contains specific procedures a city, county, special district or joint powers authority must take before adopting any new or increased general tax or assessment.¹⁹

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 public testimony may be given before the legislative body

The legislative body may not meet in closed session during emergency meetings.

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proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.²⁰ 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 articles XIII C or XIII D of the Constitution,²¹ which was added by Proposition 218 in 1996.

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.²²

- 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."
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

As seen in the above-described instances, the exceptions are narrow. 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.

The second 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.

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 or to place a matter of

business on the agenda for a subsequent meeting (subject to its own rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.²³ However, caution should be used to avoid any discussion or action on such items.

"I'd like a two-thirds vote of the board, so we can go ahead and act on phase two of the East Area Project," said chairman Jones.

"It's not on the agenda. But we learned two days ago that we're 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 citizen. If possible, 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:

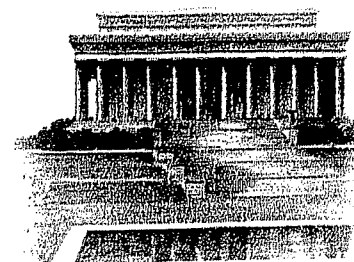
- *First, make the finding that there is an immediate need to take action that arose since the posting of the agenda and the matter is then "placed on the agenda."*
- *Second, discuss and act on the item.*

Notes

1. California Government Code section 54954(a)
2. California Government Code section 54954.2(a)
3. California Government Code section 54954.2(a)
4. California Government Code section 54954.2(a)
5. California Government Code section 54956
6. California Government Code section 54956
7. California Government Code section 54955
8. California Government Code section 54954.2(b)(3)
9. California Government Code section 54955
10. California Government Code section 54957.7(a)
11. California Government Code section 54957.7(b) and (c)
12. California Government Code section 54955.1
13. California Government Code section 54956.5
14. California Government Code section 54956.5
15. California Government Code section 54954.1
16. California Education Code section 35144 and 35145
17. *Carlson v. Paradise Unified School District* (1971) 18 Cal. App. 3d 196, 95 Cal. Rptr. 650
18. California Education Code section 35145.5
19. California Government Code section 54954.6
20. California Government Code section 54954.6(g)
21. California Government Code section 54954.6(a)(1)
22. California Government Code section 54954.2(b)
23. California Government Code section 54954.2(a)

Chapter 4: Notices and Agendas

The Brown Act generally prohibits any action or discussion of items not on the posted agenda.



Chapter 5: Rights of the Public

"...ALL PERSONS SHALL BE PERMITTED TO ATTEND..."

A number of the Brown Act's provisions protect the public's right to attend 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 other document 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.¹

No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry or sex, or which 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.² (This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.³)

Action by secret ballot, whether preliminary or final, is flatly prohibited.⁴

There can be no "semi-closed" meetings, which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.⁵

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, 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.⁶

Finally, no notice, agenda, announcement or report required by the Brown Act need identify a victim of sexual misconduct or child abuse, unless the identity of the person has been publicly disclosed.⁷

"Are there any comments from the public?" asked the Mayor during the city council meeting.

A man stepped forward from the audience, and the Mayor continued, "Please give us your name and address for the record."

"I don't have to, and I'd rather not," came the reply.

"You don't have to give us your name to attend the meeting," said the Mayor, "but you do if you want to testify."

It is unclear whether members of the public can be required to provide their names, addresses or other information as a condition to participating in (as opposed to attending) a meeting. If such information is relevant and necessary to the subject matter of a public hearing or evidentiary proceeding, it probably can be required. On the other hand, it seems less likely that such information can be required as a prerequisite to addressing the legislative body during oral communication on general matters within the subject matter jurisdiction of the agency.⁸

Records and recordings

The public has the right to review agendas and other writings distributed to a majority of the legislative body. Except for privileged documents, those materials are public records and must be made available.⁹ A fee or deposit may be charged for a copy of a public record.¹⁰

To ensure action is not taken on documents not available for public review, writings 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.

A fee or deposit
may be charged
for a copy of a
public record.

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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 also subject to the 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.¹¹ The agency may impose its ordinary charge for copies.¹²

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting, absent a reasonable finding by the legislative body that recorders or cameras would persistently disrupt proceedings.¹³

A local agency cannot prohibit or restrict the public broadcast of its open and public meetings without reasonable finding that the noise, illumination or obstruction of view will be a "persistent" disruption.¹⁴

Finally, governing bodies can go beyond these minimal standards to require greater access to their meetings and to those of their appointed bodies.¹⁵

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.¹⁶

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.¹⁷

The legislative body may adopt reasonable regulations, including time limits, on public comments.¹⁸ Such regulations should be enforced fairly and without regard to speakers' viewpoints.

The public need not 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.

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item but need not allow members of the public an opportunity to speak on nonagendized items.¹⁹

Reactive discussion

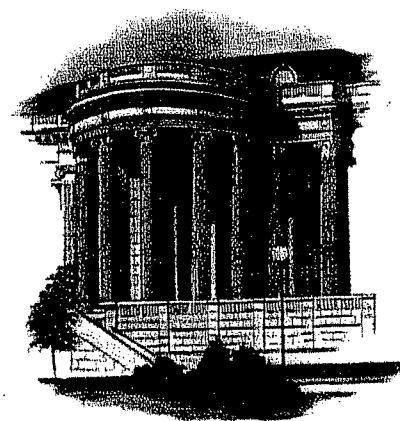
The public can talk about anything, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

The Brown Act specifically allows members of the legislative body or its staff to "briefly respond" to comments or questions from members of the public.²⁰ Other brief or routine comments may also be made, as mentioned at the end of the previous chapter.

Notes

1. California Government Code section 54953.3
2. California Government Code section 54961(a)
3. California Government Code section 54952.2(c)(2)
4. California Government Code section 54953(c)
5. 46 Op. Cal. Att'y Gen. 34 (1965)
6. California Government Code section 54957.9
7. California Government Code section 54961(b)
8. California Government Code section 54954.3(b)
9. California Government Code section 54957.5
10. California Government Code section 54957.5
11. California Government Code section 54953.5(b)
12. California Government Code section 54957.5(c)
13. California Government Code section 54953.5(a)
14. California Government Code section 54953.6
15. California Government Code section 54953.7
16. California Government Code section 54954.3(a)
17. California Government Code section 54954.3(c)
18. California Government Code section 54954.3(b); 75 Op. Cal. Att'y Gen. 89 (1992)
19. California Government Code section 54954.3(a)
20. California Government Code section 54954.2(a)

The legislative body
may adopt reasonable
regulations, including time
limits, on public comment



“...EXCEPT AS OTHERWISE PROVIDED...”

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. 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 must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.¹

Meetings of a legislative body are either open or closed. A legislative body cannot invite selected members of the public to attend a meeting while excluding others.² Closed sessions should involve only the members of the body, plus any additional support staff required, legal counsel, a supervisor involved in a disciplinary matter, consultants, a labor negotiator or any witnesses in the case where the legislative body is hearing complaints and charges against an employee. Individuals who do not have an official role in advising the legislative body on closed session subject matters should be excluded from closed session discussions.³

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind. 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.

Agendas and reports

The legal authority for a closed session must be included on the posted agenda, with the same kind of brief description required of a regular meeting item.

The Brown Act supplies a series of fill-in-the-blank samples, which provide a “safe harbor” from legal attacks. These samples 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 drug cases, hospital boards of directors, and medical quality assurance committees. (For details, see section 54954.5 of the Brown Act text at the end of this guide.)

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.⁴

Following a closed session, if action is taken, 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.⁵ 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.

In addition, 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.⁶

A confidential “minute book” may be kept to record actions taken at closed sessions.⁷ 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.⁸ Minute books must also be disclosed to a court if a lawsuit claims an open meeting violation. Minutes of an improper closed session are not confidential.

Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions, and legislative bodies do well to

Meetings of a legislative body are either open or closed.

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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.

Personnel

Meetings can be closed for "personnel matters"—a term used more for convenience than for accuracy. The text of the Brown Act never mentions "personnel."

The law instead says a meeting can be closed "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."⁹ The purpose of 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.¹⁰

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, and has the right to have the specific complaints and charges discussed in a public session. If the employee is not given notice, any disciplinary action is null and void.¹¹ However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation, as distinguished from consideration of specific complaints and charges made against an employee. In recent opinions, 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.¹² The opinions say that the Brown Act's notice and hearing requirements apply when the legislative body is reviewing evidence of specific complaints and charges and adjudicating conflicting testimony offered as evidence.

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, department head or chief engineer. An example of the latter is a legal counsel hired on contract to act as local agency attorney.

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.¹³ 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.)

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.¹⁴ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.¹⁵

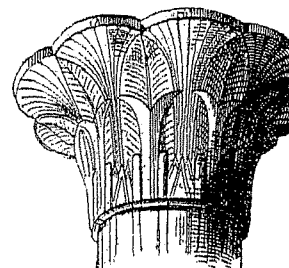
"I have some important news to announce," said board chairman Jones. "We've decided to terminate the contract of the chief executive, effective immediately. The board has met in closed session, and we've negotiated six months' severance pay."

"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. Any action on individual compensation must be taken in open session. However, if an employee has filed a claim or had threatened litigation the governing body may hold a potential litigation closed session and approve a severance package in connection with a settlement agreement.

Chapter 6: Closed Sessions

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



Chapter 6: Closed Sessions

Protection of the attorney/client privilege cannot by itself be the reason for a closed session.

Pending litigation

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.¹⁶

The Brown Act expressly authorizes closed sessions to discuss what is considered “pending litigation.” The rules that apply to holding a pending 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 pending litigation.¹⁷ While the issue is not absolutely clear, the Attorney General believes that if the agency’s attorney is not a participant, a “pending litigation” closed session cannot be held.¹⁸ 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.

“Litigation” that may be discussed in closed session includes the following three types of matters:

- (1) Existing litigation,
- (2) Threatened or anticipated litigation, and
- (3) Potential litigation.

Existing litigation

Existing litigation includes any adjudicatory proceedings, including eminent domain, 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 to consider alternatives for resolution of the case.

Threatened or anticipated litigation against the local agency

Closed sessions are authorized for legal

counsel to inform the legislative body of specific facts and circumstances which suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances. 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.

Potential litigation initiated by the local agency

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

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda. 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. Each agency attorney is aware of and should make other disclosures that may be required in specific instances.

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 or negotiators on price and terms of payment.¹⁹

The agency’s negotiator may be a member of the legislative body itself. Prior to the closed session, the legislative body must identify its negotiator, the real property which the negotiations may concern and the names of the persons with whom its negotiators may negotiate.²⁰

After real estate negotiations are concluded, the approval of the agreement and the substance of the agreement must be reported. If its own approval makes the agreement final, the body must

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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 as soon as informed of it, as well as the substance of the agreement, upon the inquiry of any person.

"Our population is exploding, and we have to think about new school sites," said Board Member Baker.

"Not only that," interjected Board Member Charles, "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 Doe. "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. However, a legislative body can make a final decision on real property in a closed session.

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,²¹ on employee salaries and fringe benefits for both union and non-union employees; for represented employees, it may also consider working conditions which by law require negotiation. These 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.

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.²²

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.²³ The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an "employee" includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

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 Act:

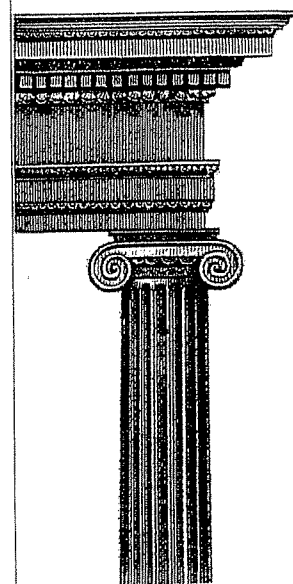
- (1) a negotiating session with a recognized or certified employee organization;
- (2) a meeting of a mediator with either side;
- (3) a hearing or meeting held by a fact finder or arbitrator; and
- (4) a session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.²⁴

Public participation under the Rodda Act also takes another form.²⁵ All initial proposals of both sides must be presented at public meetings and are public record. 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.²⁶ The final vote must be in public.

Other Education Code exceptions

Student disciplinary meetings by boards of school districts and community college districts are governed by the Education Code. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing

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



Chapter 6: Closed Sessions

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

would reveal personal, disciplinary or academic information about students contrary to state and federal pupil privacy law. The pupil's parent or guardian may request an open meeting.

Final action concerning kindergarten through 12th grade students must be taken at a public meeting, and is a public record.²⁷ In the case of community colleges, only expulsions need be made public.

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.²⁸ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.²⁹

Grand jury testimony

A legislative body, including its members as individuals, may specifically testify in private before a grand jury, either individually or as a group.³⁰ Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

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.

If the body as a result decides to deny the license, the applicant may withdraw the application. In that case, no record is to be kept of the decision and all elements of the closed session are confidential.

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.³¹

Public security

Legislative bodies can meet in closed session to discuss matters posing a threat to the security of public buildings, 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 either the Attorney General, district attorney, sheriff or chief of police, or their deputies.³² Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional drug law enforcement agency

A joint powers agency formed to provide drug law enforcement services 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.

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.³³

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.³⁴

- ◆ One is 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.
- ◆ The other allows district or municipal hospitals to hold closed sessions 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

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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.³⁵

Maintaining the confidentiality of closed session discussions

The Brown Act lacks guidance on whether remedies are available to prohibit or punish closed session "leaks." The law remains unsettled in this area. Agency attorneys and the Attorney General believe that officials have a fiduciary duty to protect the confidentiality of closed session discussions. This duty, of course, must give way to the obligation to disclose improper matters or discussions which may come up in closed sessions.

The Attorney General has issued an opinion that it is "improper" for officials to publicly disclose information received during a closed session regarding pending litigation, though he also concludes that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.³⁶ The opinion includes a list of sanctions that could apply to a person who discloses closed session information, including

- ◆ an injunction barring the person's attendance at future closed sessions,
- ◆ an injunction against future public disclosures, and
- ◆ a formal accusation filed against the person for willful or corrupt misconduct in office.³⁷

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.

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.³⁸ This holding supports the notion that there is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

"I want the press to know that I voted in closed session against settlement and will continue to do so as long as these discussions progress," said Council Member Arnold.

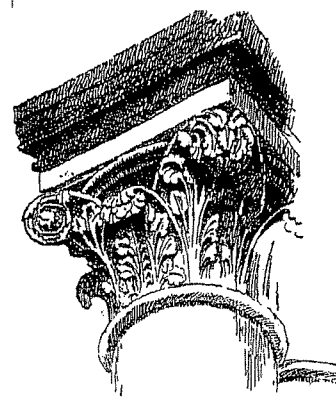
"Don't settle," reveals Council Member Baker to the plaintiff, over coffee. "The city's offer coming your way is not our bottom line."

The Brown Act expressly permits—in fact, requires—that final votes taken in closed session be reported publicly.³⁹ Disclosure of other closed session information is risky, at best. The only completely safe way to divulge closed session discussions is pursuant to a court order issued under section 54960(a) of the Brown Act. That section provides a remedy to a member of a legislative body to determine by court order whether the legislative body's efforts to discourage the official's disclosure of information is passes muster under federal or state law.

Notes

1. 61 Op. Cal. Att'y Gen. 220 (1978)
2. 46 Op. Cal. Att'y Gen. 34 (1965)
3. 98 Op. Cal. Attorney Gen. 1011 (1999)
4. California Government Code sections 54956.9 and 54957.7
5. California Government Code section 54957.1(a)
6. California Government Code section 54957.1(b)
7. California Government Code section 54957.2
8. *Hamilton v. Town of Los Gatos* (1989) 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888
9. California Government Code section 54957
10. 63 Op. Cal. Att'y Gen. 215 (1980)
11. California Government Code section 54957
12. 78 Op. Cal. Att'y Gen. 218 (1995); *Furtado v. Sierra Community College* (1998) 68 Cal. App. 4th 876, 80 Cal. Rptr. 2d 589; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal. App. 4th 87, 82 Cal. Rptr. 2d 452
13. California Government Code section 54957
14. *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal. App. 4th 1165, 79 Cal. Rptr. 2d 649
15. California Government Code section 54957.1(a)(5)
16. *Roberts v. City of Palmdale* (1993) 5 Cal. 4th 363, 20 Cal. Rptr. 2d 330
17. California Government Code section 54956.9
18. "Open Meeting Laws," California Attorney General, 1989, p. 41
19. California Government Code section 54956.8
20. California Government Code section 54956.8
21. California Government Code section 54957.6
22. 57 Op. Cal. Att'y Gen. 209 (1974)
23. California Government Code section 54957.1(a)(6)
24. California Government Code section 3549.1
25. California Government Code section 3540
26. California Government Code section 3547
27. California Education Code section 48918
28. California Education Code section 72122
29. California Education Code section 60617
30. California Government Code section 54953.1
31. California Government Code section 54956.7
32. California Government Code section 54957
33. California Government Code section 54957.8
34. California Government Code section 54962
35. California Health and Safety Code section 32106
36. 76 Op. Cal. Att'y Gen. 289 (1993)
37. 80 Op. Cal. Att'y Gen. 231 (1997)
38. *Kleitman v. Superior Court* (1999) 74 Cal. App. 4th 324, 327, 87 Cal. Rptr. 2d 813, 815
39. California Government Code section 54957.1

Chapter 6: Closed Sessions



There is a strong interest in protecting the confidentiality of proper and lawful closed session discussions.

Chapter 7: Remedies

The Brown Act had no penalties or methods for enforcing compliance when first enacted. However, subsequent amendments have put teeth into enforcement. Specifically, the Brown Act was amended in 1961 to make violations a crime, and to authorize civil action to stop or prevent violations. A provision went into effect in 1987 permitting invalidation of some actions taken in violation of the law. The 1994 amendments extended the time limits for starting an invalidation action, and altered the definition of a misdemeanor violation.

As discussed below, persons wishing to invoke the Brown Act's civil remedies must first provide the legislative body the opportunity to cure its actions.

Even with safeguards such as posting a specific agenda, closed session parameters, and new remedies to enforce these provisions, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. In other words, compliance ultimately requires 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 person, including the district attorney, may seek to invalidate a legislative body's actions that violate the Brown Act. Not all actions can be challenged; and in any case the legislative body has a chance to cure or correct its actions.¹

Only actions taken in violation of certain provisions of the Brown Act may be invalidated. Invalidation is limited to actions which 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); and 54956 (special meetings).

Even violations of these provisions cannot be invalidated if they involve the following types of actions:

- those in substantial compliance with these provisions;
- those involving 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 meeting at which the action is taken.

The challenger to the action must also show prejudice as a result of the alleged violation.²

Violations of sections not listed here cannot give rise to invalidation actions, but are subject to the other remedies.³

Before filing a court action, the aggrieved party must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the alleged violation, and the "cure" sought, and it must be sent within 90 days of the alleged violation. (However, the time limit is 30 days if the action was taken in open session but in violation of Section 54952.2, which defines "meetings.")⁴

The legislative body then has up to 30 days to cure and correct its action. If it does not act, any law suit must be filed within the next 15 days.

Despite its limitations, the invalidation language means legislative bodies should be even more careful not to violate the Brown Act. Challenges are likely to come from the general public and news media as well as from unexpected quarters—such as disgruntled business people. Some violations, such as inadequate agenda descriptions or posting, may be relatively easy to cure and correct. Other violations—such as inappropriate closed sessions—may be more difficult to correct.

A legislative body should cure and correct a challenged action whenever feasible. Two items should be placed on the next agenda, the first for a decision on whether to correct or cure an action, and the second for consideration of the action if the answer to the first item is "yes." The recommended action in the latter case is not to rescind a previous action but to supersede it. The record of the earlier meeting can be incorporated, but new public testimony should be allowed.

**A legislative body
should cure and correct
a challenged action
whenever feasible.**

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Civil action

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. The court may later review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant sections.⁵

Costs and attorney's fees

Someone from the agency 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. However, the award is only against the local agency and not the individual members of the legislative body. A local agency may be awarded court costs and attorney's fees if the court finds the law suit was clearly frivolous and lacking in merit.⁶

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.⁷

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.⁸

"Action taken" is defined elsewhere as 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.⁹ 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.¹⁰ 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.¹¹ As with other misdemeanors, the filing of a complaint is up to the district attorney.

Informal resolution

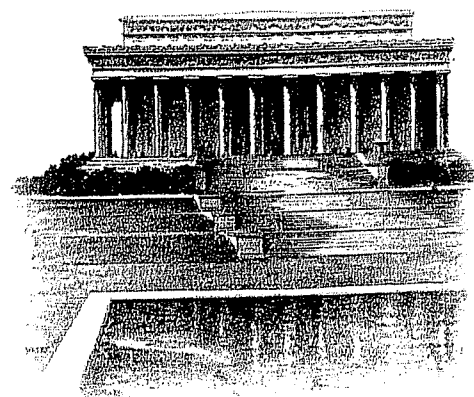
Public agencies always have the opportunity to re-notice and re-hear items of significant public interest. Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy citizens fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down.

The best solution is prevention.

The best solution is prevention.

Notes

1. California Government Code section 54960.1
2. *Cohan v. City of Thousand Oaks* (1994) 30 Cal. App. 4th 547, 556, 35 Cal. Rptr. 2d 782, 786
3. California Government Code section 54960.1(a)
4. California Government Code section 54960.1, subds. (b) and (c)(1)
5. California Government Code section 54960
6. California Government Code section 54960.5
7. 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.
8. California Government Code section 54959
9. California Government Code section 54952.6
10. 61 Op. Cal. Att'y Gen. 283 (1978)
11. California Government Code section 54959



Chapter 8: Beyond the Law

This guide has focused not only on the Brown Act, 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, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices for itself and its subordinate committees and bodies that are more stringent than the law itself requires. 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 is insufficiently precise. As with any other significant policy, public comment should be solicited.

A local policy could reflect:

- 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.
- The right of the press to fully understand and communicate public agency decision-making.

Many agencies may have specific constituencies with other expectations. An explicit and comprehensive public meeting and information policy, especially if reviewed periodically could 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. It may be well for an agency to go beyond the law, to look at its unique circumstances and determine if there is a better way to prevent potential problems.

At the very least, local agencies need to think about how their agendas are structured, and to work at making compliance with the Brown Act easier. They need to plan carefully to make sure public participation fits smoothly into the process.

The Brown Act should be neither an excuse for bureaucratic obfuscation nor a mechanism for public filibusters. And it should not preclude efficient and orderly meetings.

The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for the maximum degree of openness in local government, yet should allow government to function responsively and productively.

On the one hand, there must be adequate notice of what discussion and action is to occur during a meeting; on the other there must be 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.

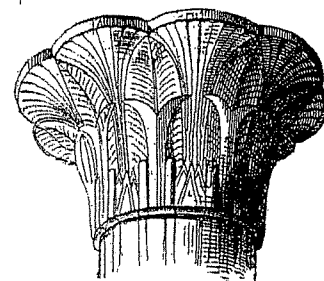
In the end, the Brown Act must assure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

Local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act is insufficiently precise.

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1. The agency's web-site 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? *Yes, because it is a technological device that may serve to allow for the development of a collective concurrence as to action to be taken.*
2. A member of the legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting? *No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.*
3. 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? *Yes, because the incumbents should not be constrained from participating in the political process as any other candidate.*
4. The entire legislative body intends to travel to Sacramento to testify against a bill before the Senate Local Government Committee. Must this activity be noticed as a meeting of the body? *No, because the members are attending and participating in an open meeting of another governmental body to which the public may attend.*
5. The members in question #4 then proceed upstairs to the office of their local assemblyperson to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public? *Yes, because the entire body may not meet behind closed doors except for proper closed sessions.*
6. A member on vacation desires 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? *She probably may participate, but she may not vote because she is not in a noticed and posted teleconference location.*
7. 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 at city hall 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? *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 by the council and the press conference is open to the public, it seems harmless.*
8. 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? *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 able to attend.*
9. 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? *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.*
10. A member of the legislative body informally establishes an advisory committee of five residents to advise her on issues as they arise. Is this committee covered by the Brown Act? *No, because the committee has not been established by formal action of the legislative body.*
11. On the morning following the election to a five-member legislative body of a local agency, the three successful candidates, none incumbents, meet for a celebratory breakfast. Does this violate the Brown Act? *It might, and absolutely would if the conversation turns to*



agency business. Even though not officially sworn in, the Brown Act applies to these individuals. 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.

12. 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? *She may attend, but only as an observer; she may not participate.*
13. The agenda for a regular meeting of the legislative body contains the following item of business under New Business:

"Consideration of a report regarding traffic on Eighth Street."

Is this description adequate? *If it 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.*

14. The agenda always includes an opportunity for the "Chief Executive Officer's Report," during which time the officer provides a brief report on notable topics of interest, none of which are listed on the agenda. Is this permissible? *Yes, as long as it does not result in legislative body discussion or action.*
15. Must the legislative body allow members of the public to show videos during the "audience participation" part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit? *Probably, though the agency is under no obligation to provide equipment.*

16. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during audience comments? *No, as long as the criticism pertains to job performance.*
17. During the audience 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? *No, for Brown Act purposes, the speech is relevant to the governing of the agency and an implicit criticism of the incumbents.*
18. 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? *Yes, but the settlement agreement is a public document and must be disclosed on request.*
19. 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? *No, attendance in closed sessions is reserved exclusively to the agency's advisors.*
20. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session? *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

The Ralph M. Brown Act

California Government Code Sections 54950-54962

As Amended January 1, 2000

54950. 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.

54950.5. This chapter shall be known as the Ralph M. Brown Act.

54951. As used in this chapter, "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.

54952. As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation or entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation or entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation or entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation or entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Intent

Title

"local agency": public agencies

"legislative body": governing body

body created by formal action

**private corporation: exercises
delegated authority**

**private corporation: receives public
funds/ appointed legislative body
member on its governing board**

**status change from voting member
to nonvoting member: public meeting
requirements**

lessee of a hospital

newly-elected members**"meeting" defined****majority cannot use direct communication,
personal intermediaries or
technological devices****exceptions:****1. individual contacts****2. conferences****3. community meetings****4. another body of the local agency****5. social or ceremonial events****6. standing committee meeting****"action taken"**

54952.1. Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) Except as authorized pursuant to Section 54953, any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item by the members of the legislative body is prohibited.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person.

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

54952.7. A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

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

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction. The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means 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. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) No legislative body shall take action by secret ballot, whether preliminary or final.

54953.1. The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

54953.5. (a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without

copies of the Brown Act for members, appointees

all meetings must be open and public

video teleconferencing

public access

no secret ballots

grand jury testimony

public cannot be required to register to attend meeting

voluntary registration

public can tape meetings

recordings are public record

noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording shall be provided without charge on a video or tape player made available by the local agency.

broadcast of open meetings

54953.6. No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

local agencies can impose stricter requirements on themselves

54953.7. Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

regular meetings set by ordinance or other rule

54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

meetings must be within local agency's territory

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

exceptions

- (1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.
- (2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.
- (3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.
- (4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.
- (5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place 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.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of the superintendent of that district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

54954.1. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. Upon receipt of the written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other

mailed notice

regular meeting agendas:
72-hour notice and posting

action on non-agenda items

**item continued from meeting
less than 5 days earlier**

resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

**public opportunity to address
the legislative body**

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

reasonable constraints on public testimony

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

**public criticism of policies,
procedures, programs or services**

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

reimbursement of costs

54954.4. (a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the

reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

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

—or—

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

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

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

(In addition to the information noticed above, the agency may be required to provide

"safe harbors" for closed session agendas

license and permit determinations

real estate negotiations

existing litigation

anticipated litigation

additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

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

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

liability claims

LIABILITY CLAIMS

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

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

threats to public services

THREAT TO PUBLIC SERVICES OR FACILITIES

Consultation with: (Specify name of law enforcement agency and title of officer)

public employees

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

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

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

labor negotiation conference

CONFERENCE WITH LABOR NEGOTIATORS

Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

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

—or—

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

(g) With respect to closed sessions called pursuant to Section 54957.8:

**multijurisdictional drug
law enforcement agency**

CASE REVIEW/PLANNING

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

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

54954.6. (a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

- (A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.
- (B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.
- (C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.
- D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.
- (E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of

hospital exceptions

hearings

federal law

tax or assessment hearings

new or increased taxes

subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

new or increased assessments

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll or the State Board of Equalization assessment roll, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The estimated amount of the assessment per parcel. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The phone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

- (1) The property owners subject to the assessment.
- (2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

54955. The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any

adjourned meetings

continued hearings

meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

54955.1. Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

special meetings

54956. A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

emergency meetings

54956.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

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

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

54956.6. No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

54956.7. Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

54956.8. Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

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

54956.87. (a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act

no fees except those specifically authorized

**closed sessions: license applicants
with criminal records**

**closed sessions: conference with
negotiator over real property**

**closed sessions: health plan
charge or complaint**

disclosure exemption for health plan records

of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulae or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (c) of Section 32106 of the Health and Safety Code, shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

closed session: pending litigation

54956.9. Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this section are hereby abrogated. This section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

litigation formally initiated

(a) Litigation, to which the local agency is a party, has been initiated formally.

(b) (1) A point has been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.

(2) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (1) of this subdivision.

(3) For purposes of paragraphs (1) and (2), "existing facts and circumstances" shall consist only of one of the following:

(A) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(B) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(C) The receipt of a claim pursuant to the Tort Claims Act or some other written communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(D) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(E) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(F) Nothing in this section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(c) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

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

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

significant exposure to litigation

**meeting to decide if closed
meeting is authorized**

initiating litigation

**closed session: claims
against joint powers agencies**

54956.95. (a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

**closed sessions: threats to
public buildings or to public access**

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

personnel matters

As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this section shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this section shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

**public reports on
closed session actions, votes**

54957.1. (a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

real estate negotiations

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

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

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

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

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

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(b) Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester

pending litigation

joint powers authority claims

personnel actions

labor negotiations

copies of closed session documents

is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in paragraph (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

closed session minute book

54957.2. (a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

closed session minute book

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection 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.

(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6257.

(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

**writings distributed to a majority
of a body are public records**

54957.6. (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

54957.7. (a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(b) After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

54957.8. Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional drug law enforcement agency, or an advisory body of a multijurisdictional drug law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional drug law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

**closed sessions: meeting with
representatives on labor negotiations**

**advance announcement
of closed session items**

**closed session: multijurisdictional
drug law enforcement agency**

"Multijurisdictional drug law enforcement agency," for purposes of this section, means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, which provides drug law enforcement services for the parties to the joint powers agreement.

The Legislature finds and declares that this section is within the public interest, in that its provisions are necessary to prevent the impairment of ongoing law enforcement investigations, to protect witnesses and informants, and to permit the discussion of effective courses of action in particular cases.

willful interruptions of meetings

54957.9. In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

provisions apply not withstanding conflicts of law

54958. The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

misdemeanor violations of the Act

54959. Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

civil actions to prevent violations

54960. (a) The district attorney or any interested person may commence an action by mandamus, injunction or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to actions or threatened future action of the legislative body, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to tape record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to tape record its closed sessions and preserve the tape recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The tapes shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the tape is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session which has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency which has custody and control of the tape recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

- (i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency which has custody and control of the recording.
- (ii) An affidavit which contains specific facts indicating that a violation of the act occurred in the closed session.
- (3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.
- (4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.
- (5) Nothing in this section shall permit discovery of communications which are protected by the attorney-client privilege.

54960.1. (a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, or 54956 shall not be determined to be null and void if any of the following conditions exist:

action to invalidate

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, and 54956.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

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

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

court may award attorney fees

54960.5. A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1 where it is found that a legislative body of the local agency has violated this chapter. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

54961. (a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

54962. Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

**meeting sites must be free of discrimination
and accessible to disabled**

**no closed meetings except
as expressly authorized**

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California Community College League of
California Cities

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ACTION MINUTES
OF THE
REGULAR MEETING
TRAILS AND LANDSCAPING COMMITTEE

MARCH 27, 2006

Agenda Date: 04-10-06
Agenda Item: 2 (b)

1.a. COMMITTEE CALL TO ORDER & ROLL CALL

The meeting was called to order at 7:05 p.m. by Chairman Dan Richardson in the Library Community Room, 6125 Clayton Road, Clayton, CA.

Committee Members present: Candace Bass, JoAnn Caspar, Victor Geisler, Howard Kaplan, Jerry Kosel, Linda Pinder, Dan Richardson, Janise Trezise, Bill Vineyard, Memory Woodard, Vice-Mayor Bill Walcutt (ex-officio Member).

Committee Members absent: Ben Jay, Jerry Zimmerman.

Staff present: Assistant to the City Manager Laura Hoffmeister, Maintenance Supervisor Mark Janney.

1.b. INTRODUCTIONS OF NEW COMMITTEE MEMBERS

Chairman Dan Richardson welcomed the new committee members: Janise Trezise and Victor Geisler, recently appointed by the City Council replacing members who had previously resigned; and Jerry Kosel, and Memory Woodard who were unable to attend the first meeting. These Committee Members were invited by the Chair to provide a short biography of their residency, employment and interest in being on the Committee.

2. CONSENT CALENDAR

Motion by Woodward, seconded by Pinder to approve the consent calendar. Motion passed unanimously (Vote 10-0).

3. PUBLIC COMMENTS

None.

4. ACTION ITEMS

- (a) *Consideration and discussion of possible Public Education and Awareness Programs and Opportunities. Discussion and review of the scope of responsibilities for the existing Citywide Landscape Maintenance District (CFD 1997-1).*

Chairman Dan Richardson provided overview and history of the Blue Ribbon Committees prior outreach efforts. Other Committee members shared some additional background of outreach, i.e.: community surveys, meetings with interest groups. There was consensus that on-going articles in the *Clayton Pioneer* should be done. Chairman Richardson would contact the *Pioneer* to explore this and report back at the next meeting. Additional discussion ideas occurred, including having a booth at certain community events, holding community informational

meetings, having a banner up when a community info meeting held. City staff was asked to ensure that the materials from the Blue Ribbon Committee were still on-line. Chair Richardson, with consensus of the Committee, tabled further discussion to future meeting agendas, in order to address other agenda items.

No Action taken.

(b) *Continued Discussion and review of the scope of responsibilities for the existing Citywide Landscape Maintenance District (CFD 1997-1).*

Chairman Richardson, with consensus of the Committee, tabled this item due to time considerations and continued it to the next meeting agenda.

No Action taken.

(c) *Discussion of current and preferred Maintenance Standards for the Landscape District.*

Chairman Richardson, with consensus of the Committee, tabled this item due to time considerations and continued it to the next meeting agenda.

No Action taken.

(d) *Consideration of date for Committee field tour of Landscape maintenance District.* Moved Chairman Richardson, with consensus of the Committee, tabled this item due to time considerations and continued it to the next meeting agenda. Committee members were asked to bring to the next meeting their calendar so that a date could be set and any location ideas to consider for including in the tour.

No Action taken.

(e) *Establish schedule for Committee Member reports at City Council meetings.*

Committee Member Vineyard agreed to report to the next City Council meeting (April 4, 2006). The Chair with consensus of the committee members continued the item to the next meeting to allow calendar coordination by committee members for other future dates.

(f) *Selection of Vice Chair.*

Committee Member Woodard nominated Bill Vineyard, seconded by Committee Member Pinder. Committee Member Vineyard asked if anyone else wanted to serve, he could but thought a new member would be a good complement and allow an opportunity for them to get more involved. Committee Member Geisler indicated he would be interested. Committee Member Vineyard declined the nomination and members Woodard and Pinder withdrew the nomination.

Motion by Woodard for Geisler as Vice Chair, seconded by Vineyard, and unanimously approved (Vote 10-0).

5. CORRESPONDENCE

None.

6. COMMITTEE ITEMS

- (a). Chairman Richardson would provide background materials regarding plant care standards; and see about getting an estimate of the value to the current city landscape district (plants/irrigation); and calendar of community event dates.
- (b). Chairman Richardson indicated it would be beneficial for the Committee to begin discussing the District's existing and desired Maintenance Standards at the next meeting.
- (c). Chairman Richardson reminded members to bring their calendars to the next meeting so that the field trip date can be selected; reporting dates to the City Council and community event dates.
- (d). Committee requested that a brochure be created covering the Committee's purpose, names, meeting dates and website address.

7. ADJOURNMENT

Upon call by Chairman Richardson, the meeting adjourned at 8:55 p.m.

Minutes prepared by:

Laura Hoffmeister, Asst. to the City Manager

APPROVED BY THE COMMITTEE

Dan Richardson, Chairman

#

LANDSCAPE DISTRICT MAINTENANCE STANDARDS

Blue Ribbon Committee

18 October 2004

<u>MAINTENANCE CATEGORY</u>	<u>CURRENT ASSESSMENT</u>	<u>PREFERRED LEVEL</u>	<u>MINIMUM LEVEL</u>
Turf Care	3	2	3
Fertilize Turf	3	2	3
Irrigation (water)	2	2	2
Irrigation System (Mtn. & Repair)	4 - 5	2	2
Prune Shrubs	3 - 4	2	2
Fertilize Shrubs	4	2	3
Prune Trees	4	2 - 3	2 - 3
Litter Control	5	4	5
Replace Landscape	4 - 5	2	2
Trails	4	2	2
Weed Abatement			
Trails Repair	4 - 5	2	3
Open Space (weed abate/fire breaks)	4	2 - 3	3
Herbicide Application	3	2	2
Clayton Fountain	Maintenance Only Holiday/Special Event operation	Daily	Weekends

Note: Each maintenance task was rated on a standard scale [level] as outlined in the *Operational Guidelines for Grounds Management* (2001) published by the National Recreation and Parks Association (NRPA), the Association of Higher Education Facilities Officers (APPA), and the Professional Grounds Management Society. Level 1 constitutes a very high maintenance expectation typically reserved for special, high-visibility areas. Level 2 is the norm one expects to see on a regular, recurring basis. Levels 3 and 4 are lower than the expected norm and result from insufficient staff and resources. Level 5 is one step before the land is allowed to return to its original state, and Level 6 is the point at which the land exists in its natural state.

Agenda Date: 04-10-06

Agenda Item: 4 (a)



Operational Guidelines for Grounds Management

Published by:

APPA: The Association of Higher Education Facilities Officers
National Recreation and Park Association
Professional Grounds Management Society

Chapter 3: Grounds Staffing Guidelines

by Robert A. Getz

Providing guidelines for calculating the staffing requirements for a particular grounds area is based on two essential factors. First is the type of area that must be maintained and the tasks associated with that maintenance. Second is the amount of care to be provided, or the level of attention to be paid, to the grounds area. This chapter presents a series of matrices that integrate these two factors, facilitating determination of the staffing requirements for a particular type of grounds area. The Levels of Attention are described first, followed by matrices presenting tasks for grounds areas ranging from flower beds to football fields.

These matrices are designed to illustrate that each maintenance task may be accomplished with greater or lesser levels of attention. Higher levels of attention will require more staffing. The matrices are the building blocks of the grounds staffing guidelines. This chapter provides a detailed explanation of how the matrices can be used to determine required staffing levels.

Levels of Attention

The Level of Attention is the amount of time dedicated to a maintenance task. The following six sections detail what is expected at each Level of Attention. These levels were developed in part from the National Recreation and Park Association's *Park Maintenance Standards*, in which they are referred to as "Modes." They provide a word picture of what one would expect to see when encountering each of the types of spaces. The first level is one of very high expectations. It is reserved for a special, high-visibility area that requires maintenance levels beyond the norm. Level 2 is the norm one expects to see on a regular, recurring basis. This Level of Attention is the standard desired.

Levels 3 and 4 are lower than the norm and result from insufficient staff. For whatever reason, sufficient staff is not available to accomplish the care and maintenance required for the landscaped material and the standard (Level 2) is not maintained. Level 5 is one step before the land is allowed to return to its original state. Level 6 is the point at which the land is allowed to return to its natural state.

LEVEL 1

State-of-the-art maintenance applied to a high-quality diverse landscape. Associated with high-traffic urban areas, such as public squares, malls, government grounds, or college/university campuses.

TURF CARE. Grass height maintained according to species and variety of grass. Mowed at least once every five working days but may be as often as once every three working days. Aeration as required but not less than four times per year. Reseeding or sodding as needed. Weed control to be practiced so that no more than 1 percent of the surface has weeds present.

FERTILIZER. Adequate fertilization applied to plant species according to their optimum requirements. Application rates and times should ensure an even supply of nutrients for the entire year. Nitrogen, phosphorus, and potassium percentages should follow local recommendations. Trees, shrubs, and flowers should be fertilized according to their individual requirements of nutrients for optimum growth. Unusually long or short growing seasons may modify the chart slightly.

IRRIGATION. Sprinkler irrigated—electric automatic commonly used. Some manual systems could be considered adequate under plentiful rainfall circumstances and with adequate staffing. Frequency of use follows rainfall, temperature, season length, and demands of plant material.

LITTER CONTROL. Minimum of once per day, seven days per week. Extremely high visitation may increase the frequency. Receptacles should be plentiful enough to hold all trash usually generated between servicing without overflowing.

PRUNING. Frequency dictated primarily by species and variety of trees and shrubs. Length of growing season and design concept also a controlling factor—i.e., clipped vs. natural-style hedges. Timing scheduled to coincide with low demand periods or to take advantage of special growing characteristics.

DISEASE AND INSECT CONTROL. At this maintenance level, the controlling objective is to avoid public awareness of any problems. It is anticipated at Level 1 that problems will either be prevented or observed at a very early stage and corrected immediately.

SNOW REMOVAL. Snow removal starts the same day that accumulations of .5 inch are present. At no time will snow be permitted to cover transportation or parking surfaces longer than noon of the day after the snow stops. Application of snow-melting compound and/or gravel is appropriate to reduce the danger of injury due to falls.

SURFACES. Sweeping, cleaning, and washing of surfaces should be done so that at no time does an accumulation of sand, dirt, or leaves distract from the looks or safety of the area.

REPAIRS. Repairs to all elements of the design should be done immediately when problems are discovered, provided replacement parts and technicians are available to accomplish the job. When disruption to the public might be major and the repair is not critical, repairs may be postponed to a time period that is least disruptive.

INSPECTIONS. A staff member should conduct inspection daily.

FLORAL PLANTINGS. Normally, extensive or unusual floral plantings are part of the design. These may include ground-level beds, planters, or hanging baskets. Often, multiple plantings are scheduled, usually for at least two blooming cycles per year. Some designs may call for a more frequent rotation of bloom. Maximum care, including watering, fertilizing, disease control, disbudding, and weeding, is necessary. Weeding flowers and shrubs is done a minimum of once per week. The desired standard is essentially weed free.



LEVEL 2

High-level maintenance. Associated with well-developed public areas, malls, government grounds, or college/university campuses. Recommended level for most organizations.

TURF CARE. Grass cut once every five working days. Aeration as required but not less than two times per year. Reseeding or sodding when bare spots are present. Weed control practiced when weeds present a visible problem or when weeds represent 5 percent of the turf surface. Some pre-emergent products may be used at this level.

FERTILIZER. Adequate fertilizer level to ensure that all plant materials are healthy and growing vigorously. Amounts depend on species, length of growing season, soils, and rainfall. Rates should correspond to at least the lowest recommended rates. Distribution should ensure an even supply of nutrients for the entire year. Nitrogen, phosphorus, and potassium percentages should follow local recommendations. Trees, shrubs, and flowers should receive fertilizer levels to ensure optimum growth.

IRRIGATION. Sprinkler irrigated—electric automatic commonly used. Some manual systems could be considered adequate under plentiful rainfall circumstances and with adequate staffing. Frequency of use follows rainfall, temperature, season length, and demands of plant material.

LITTER CONTROL. Minimum of once per day, five days per week. Off-site movement of trash depends on size of containers and use by the public. High use may dictate daily or more frequent cleaning.

PRUNING. Usually done at least once per season unless species planted dictate more frequent attention. Sculpted hedges or high-growth species may dictate a more frequent requirement than most trees and shrubs in natural-growth plantings.

DISEASE AND INSECT CONTROL. Usually done when disease or insects are inflicting noticeable damage, are reducing vigor of plant material, or could be considered a bother to the public. Some preventive measures may be used, such as systemic chemical treatments. Cultural prevention of disease problems can reduce time spent in this category. Some minor problems may be tolerated at this level.

SNOW REMOVAL. Snow removed by noon the day following snowfall. Gravel or snowmelt may be used to reduce ice accumulation.

SURFACES. Should be cleaned, repaired, repainted, or replaced when their appearances have noticeably deteriorated.

REPAIRS. Should be done whenever safety, function, or appearance is in question.

INSPECTIONS. Inspection should be conducted by some staff member at least once a day when regular staff is scheduled.

FLORAL PLANTINGS. Normally, no more complex than two rotations of bloom per year. Care cycle is usually at least once per week, but watering may be more frequent. Health and vigor dictate cycle of fertilization and disease control. Beds essentially kept weed free.

LEVEL 3

Moderate-level maintenance. Associated with locations that have moderate to low levels of development or visitation, or with operations that, because of budget restrictions, cannot afford a higher level of maintenance.

TURF CARE. Grass cut once every ten working days. Normally not aerated unless turf quality indicates a need or in anticipation of an application of fertilizer. Reseeding or resodding done only when major bare spots appear. Weed control measures normally used when 50 percent of small areas are weed infested or when 15 percent of the general turf is infested with weeds.

FERTILIZER. Applied only when turf vigor seems to be low. Low-level application done once per year. Rate suggested is one-half the level recommended.

IRRIGATION. Dependent on climate. Locations that receive more than 25 inches of rainfall a year usually rely on natural rainfall with the possible addition of portable irrigation during periods of drought. Dry climates that receive less than 25 inches of rainfall usually have some form of supplemental irrigation. When irrigation is automatic, a demand schedule is programmed. Where manual servicing is required, the norm would be two to three times per week.

LITTER CONTROL. Minimum service of two to three times per week. High use may dictate higher levels during the warm season.

PRUNING. When required for health or reasonable appearance. With most tree and shrub species, pruning would be performed once every two to three years.

DISEASE AND INSECT CONTROL. Done only to address epidemics or serious complaints. Control measures may be put into effect when the health or survival of the plant material is threatened or when public comfort is an issue.

SNOW REMOVAL. Snow removal done based on local law requirements but generally accomplished by the day following snowfall. Some crosswalks or surfaces may not be cleared at all.

SURFACES. Cleaned on a complaint basis. Repaired or replaced as budget allows.

REPAIRS. Should be done whenever safety or function is in question.

INSPECTIONS. Inspections are conducted once per week.

FLORAL PLANTINGS. Only perennials or flowering trees or shrubs.

LEVEL 4

Moderately low-level maintenance. Associated with locations affected by budget restrictions that cannot afford a high level of maintenance.

TURF CARE. Low-frequency mowing scheduled based on species. Low-growing grasses may not be mowed. High grasses may receive periodic mowing. Weed control limited to legal requirements for noxious weeds.

FERTILIZER. Not fertilized.

IRRIGATION. No irrigation.

LITTER CONTROL. Once per week or less. Complaints may increase level above one servicing.

PRUNING. No regular trimming. Safety or damage from weather may dictate actual work schedule.

DISEASE AND INSECT CONTROL. None except where the problem is epidemic and the epidemic condition threatens resources or the public.

SNOW REMOVAL. Snow removal done based on local law requirements but generally accomplished by the day following snowfall. Some crosswalks or surfaces may not be cleared at all.

SURFACES. Replaced or repaired when safety is a concern and when budget is available.

REPAIRS. Should be done whenever safety or function is in question.

INSPECTIONS. Inspections are conducted once per month.

FLORAL PLANTINGS. None. May have wildflowers, perennials, flowering trees, or shrubs in place.

LEVEL 5

Minimum-level maintenance. Associated with locations that have severe budget restrictions.

TURF CARE. Low-frequency mowing scheduled based on species. Low-growing grasses may not be mowed. High grasses may receive periodic mowing. Weed control limited to legal requirements for noxious weeds.

FERTILIZER. Not fertilized.

IRRIGATION. No irrigation.

LITTER CONTROL. On demand or complaint basis.

PRUNING. No pruning unless safety is involved.

DISEASE AND INSECT CONTROL. No control except in epidemic or safety situations.

SNOW REMOVAL. Snow removal done based on local law requirements but generally accomplished by the day following snowfall. Some crosswalks or surfaces may not be cleared at all.

SURFACES. Serviced only when safety is a consideration.

REPAIRS. Should be done whenever safety or function is in question.

INSPECTIONS. Inspections are conducted once per month.

FLORAL PLANTINGS. None. May have wildflowers, perennials, flowering trees, or shrubs in place.

LEVEL 6 [Not included in our matrices]

Natural area that is not developed.

TURF CARE. Not mowed. Weed control only if legal requirements demand.

FERTILIZER. Not fertilized.

IRRIGATION. No irrigation.

LITTER CONTROL. On demand or complaint basis.

PRUNING. No pruning unless safety is involved.

DISEASE AND INSECT CONTROL. No control except in epidemic or safety situations.

SNOW REMOVAL. Only as necessary.

SURFACES. Serviced only when safety is a consideration.

REPAIRS. Should be done whenever safety or function is in question.

INSPECTIONS. Inspections are conducted once per month.

FLORAL PLANTINGS. None.

An Explanation of the Matrices

These matrices represent only some of the types of grounds that exist at our campuses, municipalities, and other organizations. Further areas may be developed for future editions of this publication.

The Sample Staffing Matrix in Figure 3 will serve as an example to illustrate how grounds staffing calculations are made. The dimension of the flower bed—10' x 100' = 1,000 square feet—was arbitrarily determined. It is shown in a drawing in Table 1 as a 10'-wide space along the side of a building. It may not actually exist anywhere in reality, but it is a dimension that may be readily visualized as a representative space at many locations. It may also be quantified by time studies to provide a measuring stick against which specific grounds may be compared. The size of the flower bed is also easily described and understood by an administrator, supervisor, board member, or any other authority during an explanation of how final staffing levels have been determined.

Across the top of the matrix, Levels of Attention are noted as 1, 2, 3, 4, and 5. These levels indicate how much attention will be provided to the flower bed. Level 1 is the highest Level of Attention and is normally restricted to prominent locales, such as administrative offices, a newly donated building, a point frequented by visitors, or another point of interest. Level 2 is the norm. The attention at this level is what would normally be provided as day-to-day service. Levels 3 and 4 show a decline in service resulting from cuts in staff caused by restructuring, downsizing, budget cuts, or leveling. Finally, Level 5 might more properly be called the Level of Inattention. It's the point at which the next step would be to plow the bed under and seed for grass.

In the Maintenance Tasks column, a series of tasks required to maintain a flower bed is listed. Under each task, a time is listed based on the Professional Grounds Management Society's publication entitled *Grounds Maintenance Estimating Guidelines*, eighth edition. The specified time is a measure of how long it takes to accomplish the given task once in this 1,000-square-foot flower bed. For example, spring preparation of the flower bed requires 200 minutes. According to the column under Level 1, that time is multiplied by the adjustment factor of 0.03.

Gary Napper

From: Laura Hoffmeister [lhoffmeister@ci.clayton.ca.us]
Sent: Wednesday, March 29, 2006 11:49 AM
To: 'Gary Napper'
Subject: FW: Trails and Landscaping Committee

Agenda Date: 04-10-06

Agenda Item: 4 (e)

-----Original Message-----

From: Bill Vineyard [mailto:repmanbilly@yahoo.com]
Sent: Tuesday, March 28, 2006 1:45 PM
To: Laura Hoffmeister
Subject: Trails and Landscaping Committee

Hi Laura,

I'm a bit puzzled - are we supposed to get you some suggested layouts for the informational pamphlet or are you going to do that?

Could you please send all of the Committee members the following items for background info via email attachments?:

~~(X)~~ Our original Blue Ribbon questionnaire used
7/4/2004 at the pancake breakfast.

~~(X)~~ Our questionnaire for people who attended our Blue Ribbon seminars.

~~(X)~~ A copy of the original Blue Ribbon Landscape Maintenance District Background Info pamphlet.

Thanks,
Bill

Public Landscaping Questionnaire
(designed for the interviewer)

0. Are you a Clayton Resident?

"Clayton residents and visitors currently enjoy publicly funded landscaping that includes a trail system, open space, roadside landscaping, signs and open space firebreaks. The Clayton City Council established a Citizens Committee to review our maintenance levels and plan for the future. Clayton residents are invited to participate in a brief questionnaire that would assist us in that endeavor."

1. On which street do you live? _____

2. On a scale of 1 to 10 where 10 is the best, how would you rate the current condition of the public landscaping? _____

3. How often do you utilize public landscape facilities? (Circle one)

Deleted: ¶

Trails: **Daily Weekly Monthly Never**

Other *Dog Park:* **Daily Weekly Monthly Never**

Other *Open Space:* **Daily Weekly Monthly Never**

Other *Walkways/Sidewalks:* **Daily Weekly Monthly Never**

Other _____

4. a. Do you think that the condition of public landscaping reflects our city's image?

Yes No

b. Do you think that the condition of public landscaping affects our residents' property values?

Yes No

c. Do you think that the condition of public landscaping has the potential to impact pedestrian and/or driver safety in our community?

Yes No

5. Would you like to see the Clayton Fountain (Oakhurst Dr./Clayton Road) operated more frequently? **Yes No**

6. Are you in favor of a downtown park? **Yes No**

7. What improvements to our public landscaping would you like to see?

8. a. Are you aware of an annual city landscape assessment that's paid by all homeowners? **Yes No**

b. Did you know it expires in 2007? **Yes No**

"Thank you for taking the time to answer our survey. The Clayton Blue Ribbon Landscape committee meets usually every other week on Monday evenings from 7pm to 9pm in the Clayton Library Conference Room. All residents are welcome to attend. The next meeting will be July 12."

NOTES BELOW OR ON BACK





The purpose of this presentation is to provide information about Clayton's Landscape Maintenance Assessment District, and the adequacy of funding for the District.

- 1) Did this presentation accomplish the task as stated above and provide you with enough information to make a decision on renewing the district?
Yes No Unsure – need more information
If Unsure – what type of additional information would you like to have?

- 2) What is your own personal vision for the public landscape areas in Clayton - both throughout the entire City, and for your own immediate neighborhood?

- 3) Would you be willing to host an informational meeting in your neighborhood? If so, please provide your name and address, phone number and/or e-mail address here:
Name: _____ Address: _____
Phone No: _____ E-mail Address: _____

Thank you for your participation.

(use back if needed for additional comments)



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- 2) What is your own personal vision for the public landscape areas in Clayton - both throughout the entire City, and for your own immediate neighborhood?

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Name: _____ Address: _____
Phone No: _____ E-mail Address: _____

Thank you for your participation.

(use back if needed for additional comments)

History

The Clayton Landscape Maintenance District, which was approved by voters with passage of Measure E in 1997, formed a unified citywide district, which collects funds from property owners. These funds enable the City to maintain City roadway landscaping, open space, and trails (does not include City parks).

This annual assessment, which supports the entire district landscaping, will expire in 2007 unless it is renewed by voters.

Since 1997, the landscape area to maintain has increased by over 20% (+194,785 square feet) and the expense budget has increased to \$575,011.

What is Being Maintained

Landsaped areas – 1,034,053 square feet
Lawns and flowers – 40,734 square feet
Trees – 2,871 trees
Open space – 515.5 acres
Open space trails – 20 miles length
Creekside trails – 7.0 miles length

Who Maintains

Since 1999, the City has had only five permanent field employees who spend approximately 60% of their time on tasks in the Landscape Maintenance District.

Revenues and Expenses

The Landscape District is funded through an assessment on your County Property Tax Bill (Account JQ) of approximately \$10.24 per month per homeowner.

The money is being utilized as follows (based on the 2004-2005 budget):

Irrigation Water	\$164,000
Electricity	\$ 21,000
Supplies	\$ 20,000
Labor (including benefits)	\$248,000
Weed Abatement&Tree Trim	\$ 90,000

Deferred Maintenance List

- * Clayton Fountain (at Oakhurst Dr. & Clayton Rd.) operated daily
- * Remove clay soils and replace with quality growing soils in planting areas
- * Different ground cover plants or 12” sprinkler risers to keep plants alive
- * Provide for computer control of sprinklers

Deferred Improvement Projects

There is over \$1,200,000 in deferred landscaped projects in the Landscape Maintenance District. Some of the projects include:

- * City Entry points landscaped
- * Center Medians Plantings
- * Open Space Trails

Committee Information

In 2003, the Clayton City Council established a citizens “Blue Ribbon Committee” to examine the operations and funding of the District and to provide recommendations to the City Council regarding a strategic plan for the long-term care of the District’s landscaping and financial condition. Citizens volunteered to serve on the committee.

The committee is comprised of 15 residents and generally meets every other Monday evening at 7pm in the Clayton Community Library Conference Room.

Clayton residents are invited to attend any of these meetings and your input is welcomed.

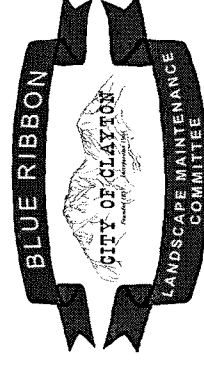
For more information, contact:

City of Clayton

6000 Heritage Trail, Clayton 94517

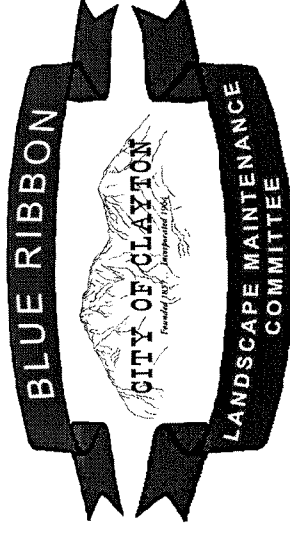
925-673-7300

www.cityofclayton.org



Committee Members

Daniel Richardson, Chair
Ben Jay, Vice Chair (Plng. Comm.)
Candace Bass
Don Buchanan
Fred Fuld
Robert Hoyer
Ron Jacobs
Howard Kaplan
Gregg Manning, Vice Mayor
Irene Nelson
Linda Pinder, (Com. Svcs. Commis.)
Don P. Smith II
Bill Vineyard
Memory Woodard
Mike Zeidler



**CITY OF
CLAYTON**

**LANDSCAPE
MAINTENANCE
DISTRICT**

**BACKGROUND
INFORMATION**

CITY OF CLAYTON
LANDSCAPE COMMITTEE
8000 HERITAGE TRAIL
CLAYTON CA 94517

Classify	Comments	Agenda Item: <u>4(e)</u>
Better maintenance	Better and more frequent maintenance.	
Better maintenance	Better maintenance	
Better maintenance	Better Maintenance	
Better maintenance	Better Maintenance - can not wait for park downtown.	
Better maintenance	better maintenance of Clayton road as main thoroughfare to City	
Better maintenance	Better maintenance of what we have.	
Better maintenance	Better maintenance. Care is inconsistent	
Better maintenance	Better median strip landscaping on Oakhurst/Concord Blvd.	
Better maintenance	bushes pruned more often and cut back from sidewalks. Many shrubs that appear to be dying and should be watered or removed.	
Better maintenance	Care and trimming of trees & bushes.	
Better maintenance	Cut back bushes along sidewalks	
Better maintenance	cut down weeds along city streets	
Better maintenance	Cut weeds along bike trails on Marsh Creek and middle & elementary school. Very nice job on median way on Marsh Creek. Leak at Marsh Creek - please check.	
Better maintenance	Dead trees & shrubs removed and replaced.	
Better maintenance	Foot of Mt. Aire needs weed control. Nicely done but sometimes overgrown.	
Better maintenance	Impressed with level of maintenance, but the shrubs are overgrown on walking trails near golf course and Indian Wells.	
Better maintenance	general upgrade & better maintenance. Selection of landscaping is fine	
Better maintenance	General upkeep	
Better maintenance	Get rid of dead plants - replace	
Better maintenance	greater frequency of maintenance. Sensitive to budget restrictions	
Better maintenance	I could write a book. Doggie DoDo disposal sites, completed curb & gutters, pruning.	
Better maintenance	Improve entrance to Regency off of Marsh Creek	
Better maintenance	Improve medians on Clayton Rd, especially at the intersection of Clayton & Marsh Creek in front of library.	
Better maintenance	Improve the shrubs.	
Better maintenance	Improved plants & maintenance in ALL areas, not just downtown (I.e. Regency Dr. @ Marsh Creek Road)	
Better maintenance	Keep it alive!	
Better maintenance	Keep it up and fresh	
Better maintenance	Keep neat & clean. Possible volunteer support.	
Better maintenance	Keep the weeds cut low where they are next to the beautified areas	
Better maintenance	Keeping plants alive and maintained. Replace as needed.	
Better maintenance	keeping up with maintenance, cleanup and pruning	
Better maintenance	Landscaping needs to be drought tolerant and dead plants cleaned up. Annuals are a waste of money and ugly.	
Better maintenance	Less dead plants - more pruning	
Better maintenance	Less dead plants - more trees	
Better maintenance	Less weeds - more plants	
Better maintenance	mainly consistent and complete upkeep	
Better maintenance	Maintain parks better	
Better maintenance	maintain sprinklers, keeping what we have alive, more trimming, drought resistant plants. Would rather pay more to maintain landscape than run fountain.	
Better maintenance	maintained, more green, no weeds. Would like to see the landscape district maintained at the same assessment.	
Better maintenance	Maintenance & weed abatement	
Better maintenance	Maintenance is crucial	
Better maintenance	Maintenance of trees on Oakhurst Dr, Clayton Rd. and Marsh Creek Rd.	

Classify	Comments
Better maintenance	Marsh Creek & Clayton Rd. need to be mowed more often. Sometime impossible to walk down because of high weeds.
Better maintenance	Median along Eagle Peak is in bad repair. More hardscape - less maintain.
Better maintenance	median entrances weed control, no high grass in downtown area. I know limited by number of workers, if more workers would like to see more improvements.
Better maintenance	More draught resistant plants. Have more citizen contributions to provide care. More frequent maintenance of trees, bushes, flowers.
Better maintenance	more frequent grooming/maintenance
Better maintenance	More frequent maintenance - trimming
Better maintenance	more frequent maintenance and extra weeding. Certain Areas, such as Peacock Creek need more attention, not currently maintained well.
Better maintenance	More frequent pruning - Why don't we get honor farm or "weekend warriors"?
Better maintenance	More frequent weed control. Corner of Mt. Zion & Clayton Rd fence in need of repair. In favor of DT park, but need funding. Existing maintenance needs is a higher priority.
Better maintenance	more plants in medians. Takes too long for upkeep or maintenance when something's damaged.
Better maintenance	More pruning
Better maintenance	Need better care
Better maintenance	Not so many weeds.
Better maintenance	open space and entry way in Peacock Creek needs greater maintenance.
Better maintenance	overgrown
Better maintenance	Parks. Median strips improved
Better maintenance	Pebble Beach needs clearing away of brush. Rest of it is pretty good
Better maintenance	Plant more color. Get rid of dead & dying plants and replant with new bushes
Better maintenance	Planting flowers which survive the summer heat
Better maintenance	plantings that do not require pruning
Better maintenance	plantings that do not require pruning. Replant an area each year.
Better maintenance	Regular Maintenance
Better maintenance	Remove dead plants - even if they can't be replaced.
Better maintenance	Remove dead plants & trees and replace with new vegetation
Better maintenance	Remove dead plants. More frequent weeding and trimming.
Better maintenance	Replace dead landscaping - maintain trails, improve irrigation. Too much waste.
Better maintenance	Replace dead plants, fix erosion & sprinkler issues everywhere
Better maintenance	Simplify - naturalize - avoid sharply trimmed hedges. Cut down dead trees. Keep walkways open. Minimize formally planted flower beds. Assessment is a good investment. Crew does an excellent job. We must renew the LM DST. Many things are too close together. Don't replace all that have died.
Better maintenance	Spaces between the Easley's - trails better landscaped in town. Basic maintenance, example fencing. Would be willing to pay more in assessment.
Better maintenance	Timely removal of dead or dying plants, shrubs, trees, broken limbs.
Better maintenance	Trim bushes more frequently
Better maintenance	Trim dead foliage. Much of public landscaping doesn't appear to be maintained. Perhaps more clean-up Clayton days.
Better maintenance	trimming
Better maintenance	Trimming is a definite need. Keeping weeds cut down and removal of dead plants.
Better maintenance	weed abatement - pre-emergence should be sprayed
Better maintenance	Weed abatement, sidewalks near Stranahan overgrown. Would like to see fountain operated daily.
Better maintenance	Weeding
Better maintenance	Weeding and trimming more often. Cut down grass behind our homes more often - fire danger

Classify	Comments
Better maintenance	Weeding, removal of dead plants, trimming. New bushes that don't require as much care. Sometimes less planting is better.
Bocci Ball	Bocci ball court
Bocci Ball	Bocci Ball Court.
Bocci Ball	Bocci Ball Court.
Bocci Ball	Bocci Ball courts put in @ Keller Ranch.
Bocci Ball	Upset about Bocci ball court, but no money put into playgrounds. Takes kids to Concord tot lot.
Dog Park	Dog park improvements - such as water and shade.
Dog Park	More improvements to dog park.
Dog Park	Steps at end of N. Mitchell Canyon Rd to access trail system - similar to steps installed at end of Cardinet Dr. near maintenance yard. Would like to see improvements to dog park. Fine with empty lot downtown as it reflects Clayton's rural history.
Dog Park	Weed abatement at dog park prior to forming seed heads.
Downtown	Clean up the open space by the Village Market and the hill from the school
Downtown	Continued efforts to improve downtown areas
Downtown	downtown center needs the most attention, the park, the market, center street.
Downtown	Improvement to open space to the side of little store and behind Clayton Community Church property. These areas are visible detractors to an overall beautiful downtown.
Fountain	Ambivalent about fountain
Fountain	The fountain looks like it belongs to Oakhurst
Fountain	Don't care either way about fountain.
Fountain	Would like fountain on weekends
Fountain	Fountain operated more often. Impressed with level of maintenance, but the shrubs are overgrown on walking trails near golf course and Indian Wells.
Fountain	Isn't fountain part of Golf Course? How can we afford to maintain it?
Fountain	Run fountain on weekends
Fountain	I don't think the City should maintain the fountain that looks like it belongs to Oakhurst CC.
Fountain	More water features. Strongly in favor of fountain operating more frequently.
Fountain	No opinion on fountain
Fountain	Doesn't the fountain belong to the golf course?
Fountain	Operate fountain more often.
Fountain	More frequent use of fountain would be wonderful, but understand there is an expense.
Fountain	Prevent vandalism of fountain
Fountain	Strongly in favor of fountain operation more frequently and downtown park.
Fountain	Strong Yes on more frequent fountain operation.
Fountain	Take care of what we currently have. Weekends and holidays OK for fountain. Don't care about downtown park.
Fountain	Working lighting of fountain & use of fountain.
Fountain	Undecided on fountain
Fountain	Maybe fountain on weekends
Misc	I have problem with paying an increased assessment
misc	After accidents on Oakhurst - repairs take too long.
Misc	Bike lanes swept up more often.
misc	Cleaner walk ways
misc	Color
misc	Community garden.
misc	Community use garden
misc	Dog waste left all over trails. Need plastic bag dispenser/disposal areas
misc	Doing pretty good

Classify	Comments
Misc	Doing pretty well with funding that is available. Don't understand about open space use?
Misc	Flowers planted should be perennials, not annuals. Less maintenance.
Misc	Generally satisfied
misc	I think you are doing a fine job
misc	It is fine as is - but if you wish to change it, Concord does a fantastic job. Would like to see more successful businesses instead of park.
misc	Just moved to Clayton - here only 1 month.
misc	Keep it up
misc	Like it the way it is now
Misc	More color.
Misc	More color.
Misc	More color. Is city benefiting financially from PH disposal contract?
Misc	more desert like landscaping. Safety issue at Marsh Creek & Clayton Road.
Misc	More flowering plants
misc	More flowers
misc	more parks and trails
misc	Native landscaping
misc	Oakhurst well done. Likes day lilies and carpet roses.
misc	Stop renting to out of town sports teams who are trashing it.
misc	Sycamore trees not doing well
misc	Use desert landscaping
misc	Use less toxic materials for weed control
misc	Use more native & drought tolerant plants
misc	We over landscape our Blvd. And areas adjacent to public sidewalks. This creates additional expense & maint. Responsibilities. Exp.. Is old Marsh Creek Rd. from Library to Middle School.
misc	Why are lights on after ??? Up at middle school area?
misc	Would like more business in town
misc	Already good
misc	Attention paid to Regency Drive entrance -curbs, et al.
misc	Fantastic job
misc	Ok as is
misc	Disappointed in plants. Feels like it is over planted with wrong materials. Losing the view is disappointing.
More plants	additional trees and shrubs
More plants	Better landscaping on Clayton Road downtown. A little color.
More plants	More landscaping around City of Clayton sign
More plants	More oak trees. Undecided about downtown park.
More plants	Not enough shade trees. We need fast growing shade trees downtown. Current small trees provide no shade when we have events on Main St. Would like to extend term of assessment district. I believe in taxes.
More plants	Plant something in Regency Drive median
Park	Acquire the burned out store and add it to the park property.
Park	Downtown park finished
Park	Don't care either way about downtown park
Park	City center grove park and gazebo
Park	Complete the park which was approved by the voters. Use more water in some areas. Thank you for all that you do to make our public property look as good as it does.
Park	Don't care about downtown park
Park	Downtown park. Improvements to downtown landscaping
Park	Grove Park to be completed.

Classify	Comments
Park	In favor of, but hesitant about downtown park.
Park	In favor of park, but would rather see more retail stores.
Park	Don't care about downtown park one way or other.
Park	Park is only thing we need.
Park	Public park in downtown area
Park	n favor of DT park, but what about cost to maintain?
Park	In favor of park, but my concern for a park would be outside visitor & vandalism, and cost to maintain. Would prefer to have more businesses.
Park	Something that doesn't need constant attention. In favor of DT park if you can find a way to finance it.
Park	Would like downtown park, but concerned about cost for upkeep and repair after vandalism. What about other use -like shops?
Park	Undecided on DT park. Would like more business there
Park	Not in favor of downtown park if we can't maintain it.
Park	Not sure about downtown park - how much will it cost to maintain?
Safety	Safety issue at Marsh Creek & Clayton Rd. intersection.
Safety	Coverage of bare ground areas next to sidewalks and on street medians. Avoid planting shrubs/bushes at street corners - as at corner of Miwok and Eagle Peak. They obstruct visibility of oncoming traffic.
Safety	Concerned about overgrown areas where can't see oncoming traffic around corners, stop signs covered, etc.
Safety	Clayton Rd & Lydia needs improvements. Tree is a safety problem. Trees on Clayton Rd. Overgrowth near creek
Safety	Cut down planter box behind Clayton Club. It blocks view of traffic coming from right.
Safety	Medians by Pumpkin Patch. Safety issues at intersection of Diablo View.
Safety	more trimming of trees for safety
Trails & Open Space	Better trail and open space maintenance. Trails are in really bad shape, especially the open space trails. Black Diamond to Peacock Creek for example. I'd pay more \$ to improve.
Trails & Open Space	Large oaks on trails should be trimmed. I would like to see small fields along trails become poppy fields.
Trails & Open Space	Keep the trails clean and cut back limbs and such.
Trails & Open Space	Mowing of weeds along the trail system in spring prior to seed heads.
Trails & Open Spaces	Trail upkeep. Rates medians an 8 but trails only a 5 for an average of 6.5
Trails & Open Spaces	Trails need better maintenance
Trails & Open Spaces	weed abatement along the trails!
Water Use	Regulate water, complete waste, potential for accidents from run-off.
Water Use	Use more water in some areas. Thank you for all that you do to make our public property look as good as it does.
Water Use	Doing a pretty good job. Needs more consistent watering.
Water Use	Fixing irrigation problems. Show outdoor movies in downtown park.
Water Use	increase watering. Replace dead shrubbery
Water Use	Proportion of water as an expense seems quite high.
Water Use	need sprinklers check - water waste. No opinion on fountain.
Water Use	Fix sprinklers and stop wasting water.
Water Use	Sprinkler system problems. Sidewalks/medians
Water Use	Sprinklers are broken often - waste of water. Additional weeding would be nice.
Water Use	Sprinklers fixed - lots of wasted water.
Water Use	Water the plants once in a while, before they die.

Gary Napper

From: Gary Napper [gnapper@ci.clayton.ca.us]
Sent: Friday, January 27, 2006 3:49 PM
To: 'danddcoin@aol.com'
Cc: Laura Hoffmeister (lhoffmeister@ci.clayton.ca.us)
Subject: Measure M information

Agenda Date: 04-10-06
Agenda Item: 5

Dear Mr. Coyne:

The bond component of Measure M was crafted by the citizens committee in order to address the \$2.8 million needed to make new installations in landscaped areas that have no landscaping yet the neighborhoods are paying the same rate right now (e.g. Lydia Lane), and to make necessary improvements to the existing landscaped areas that have deferred or neglected repairs due to lack of monies. For example: the irrigation systems in the medians have 6 inch risers but as the landscaping has matured it needs to be replaced with 12 inch risers. In addition, the irrigation systems themselves are deteriorating over time (controllers, valves) and need replacement, as do the pumps for the Clayton Fountain.

The bond component was prepared by Piper Jaffray & Co., a public finance firm in San Francisco which advises many cities and counties. The actual bond principal would not have exceeded \$2.8 million. Over the 15 years of the associated debt service the expected interest payments were estimated to be \$999,958.75 (at an issuance rate of 3.91%, which was not known until the bonds were actually sold). Therefore, the interest to principal ratio is closer to 26% for the use of the monies up front to make the improvements.

The debt service for this bond was to be paid off by a flat (never to increase) \$69.00 per year portion of the total \$365 per year payment. The CPI adjustment would have been applied only to the Operations and Maintenance Component (O&M) of \$296 per year per parcel, never to the debt service portion (\$296 O&M + \$69 debt service = \$365).

The citizens committee struggled with how to keep pace with increasing operation costs (water; labor) without some factor for inflation over a 15 year life. They felt the provision included in Measure M assured maintenance crews and the public that operations would be sufficiently covered during the life of the District. Would you have an alternative suggestion to address this aspect?

We appreciate hearing from our citizens on their true reactions to Measure M because this current District will indeed expire in July 2007. Unless extended by a vote of the electorate, the revenue to take care of these areas will disappear, as will the associated maintenance. Thank you for taking the time to let us know.

Regards,
Gary Napper
City Manager
673-7300

Gary Napper

From: Gary Napper [gnapper@ci.clayton.ca.us]
Sent: Thursday, March 30, 2006 2:49 PM
To: 'Ben Jay'; 'Bill Vineyard'; 'Bill Walcutt'; 'Candace Bass'; 'Daniel Richardson'; 'Gary '; 'Howard Kaplan'; 'Janise Trezise'; 'Jerry Kosel'; 'Jerry Zimmerman'; 'Jo Ann Caspar'; 'John '; 'Laura '; 'Linda Pinder'; 'MainMJ '; 'Memory Woodard'; 'Rhonda Basore'; 'Victor Geisler'
Subject: Fw:Measure M

Committee Members:
 An opportunity for response correspondence!
 Gary Napper
 City Manager, Clayton

-----Original Message-----

From: Mark Schletz [mailto:mschletz@value.net]
Sent: Thursday, March 30, 2006 1:11 PM
To: David T. Shuey
Subject: New Park and Measure M

I can't make the Saturday town meeting but here are my thoughts on why I didn't support Measure M.

Changes to Measure M needed in my opinion.

5. The fountain was identified as a "key feature of the community". I totally disagree with this. I'm all for shutting it down. Somewhere I read that it cost \$65K to run this thing for weekends and holidays. Well I would like in on this cash cow since I estimate that if the pump used a 20 hp motor (way bigger than expected) at 50% eff. it would only cost \$6K for electricity. That leaves a lot of money for maintenance/water. Please sign me up for this contract.

6. 2.8 million in improvement bonds. What's this for? I don't like any carte blanche money for someone's pet projects. And no, I don't want to rely on some committee's recommendation since they seem to always lean to the side of lavish expenditures. Identify the specific uses or get rid of it.

7. Irrigation repairs: Part of the problem is the shoddy systems that were put in to start with. They waste water, have poor coverage and the plastic spray heads along sidewalks are easily vandalized. Is the plan to continue on with the existing inadequate portions of the systems? You need to better identify the PLAN.

8. New/replacement plants: Why are so many needed? Those medians/roadsides don't need to have every sq in covered! We also need to pick more appropriate plants (abuse/wtr tolerant) to start with. Who selects and/or approves these? e.g. A bunch of the plants on north side of Marsh Creek Rd from Easley to Clayton Rd just put in by the new housing are now dead. What gives?

9. The measure lists public roadway landscaping by streets/roads (with the stipulation "but is not limited to"). Why aren't all roadsides and medians with landscaping listed. The median on Regency near my house isn't listed, there are probably more. This leads one to believe more importance is placed on those listed and any others can be ignored if desired. Why doesn't the city maint. crew have a complete list which would also facilitate them scheduling/confirming maintenance is taken care of.

10. The \$296 services component is nearly 2.3 times the old one. Plus it may be increased by the CPI. This is more than can be justified in my opinion. The landscape district standards of care are too aggressive. Trim shrubs every four months not necessary, twice per year Ok. Weed spray every 2-3 mo's is ok, why every 6 wks? Plant replacement, we have too many already. Trim trees as safety demands seems acceptable.

3/31/2006

11. Turf mowing: I don't know if the present schedule of once every 1 or 2 weeks is accurate, but I'm in the park 3 times a week or more and see no problem with that. Also, mowing is not an issue during the winter months.

12. Trails/Open space. Weed abatement once per year is fine. I walk the trails every day and don't have a problem with this schedule. Firebreaks twice per year may be required as shown in the measure for safety purposes.

Mark Schletz

Gary Napper

From: Victor Geisler [victorgeisler@yahoo.com]
Sent: Thursday, March 30, 2006 4:45 PM
To: Gary Napper; 'Bill Walcutt'; 'Daniel Richardson'; 'Laura '
Subject: Re: Fw:Measure M

There are some good points here. From a perception standpoint, I think this writer is pretty dead-on correct about how the community felt.

In general, I think the perception was/is: that the measure asked for too much additional money, primarily as a result of focusing the "ideal" landscaping situation, rather than on the realistic essentials; that the measure failed to *identify more of the specific expenditures*; that the measure's use of phraseology like "is not limited to" was seen as a political euphemism for "we need extra money to pad the budget"; that the measure *failed to provide the adequate level of specific and independent oversight* for each expenditure area.

Specifically, from a perception and layperson's standpoint, it really does seem a bit extreme that the maintenance cost of the fountain could be as high as it was purported to be. Additionally, while I am not sure how many people would have noticed the "plastic" spray heads along the sidewalks, it does seem that this type of design would be highly susceptible to vandalism and accidental damage. Finally, if members of the community have noticed specific examples of poor choices in the area of plants and flowers (i.e., "North side of Marsh Creek"), then they will tend to question the District's judgment in other areas.

From our discussions, my understanding is that any new measure can only afford to lose at most eight percentage-points of the Clayton vote (given that 25% of the voters always vote "No"). This does not leave much wiggle room. Using the proposed revenue standards laid out in Measure M as the "ideal" landscaping platform for City of Clayton--and if the "goal" is to draft a Measure that is aligned with both the realistic needs and fiscal tolerance of the community--then a challenging road, paved with difficult choices, may await the Committee.

Gary Napper <gnapper@ci.clayton.ca.us> wrote:

Committee Members:
 An opportunity for response correspondence!
 Gary Napper
 City Manager, Clayton

-----Original Message-----

From: Mark Schletz [mailto:mschletz@value.net]
Sent: Thursday, March 30, 2006 1:11 PM
To: David T. Shuey
Subject: New Park and Measure M

I can't make the Saturday town meeting but here are my thoughts on why I didn't support Measure M.

Changes to Measure M needed in my opinion.

5. The fountain was identified as a "key feature of the community". I totally disagree with this. I'm all for shutting it down. Somewhere I read that it cost \$65K to run this thing for weekends and holidays. Well I would like in on this cash cow since I estimate that if the pump used a 20 hp motor (way bigger than expected) at 50% eff. it would only cost \$6K for electricity. That leaves a lot of money for maintenance/water. Please sign me up for this contract.

6. 2.8 million in improvement bonds. What's this for? I don't like any carte blanche money for

Gary Napper

From: Linda Pinder [ljpinder@comcast.net]
Sent: Friday, March 31, 2006 11:20 AM
To: Mark Janney; Dan Richardson; Bill Walcutt; Gary Napper
Subject: Here are the photos that I want to share with you

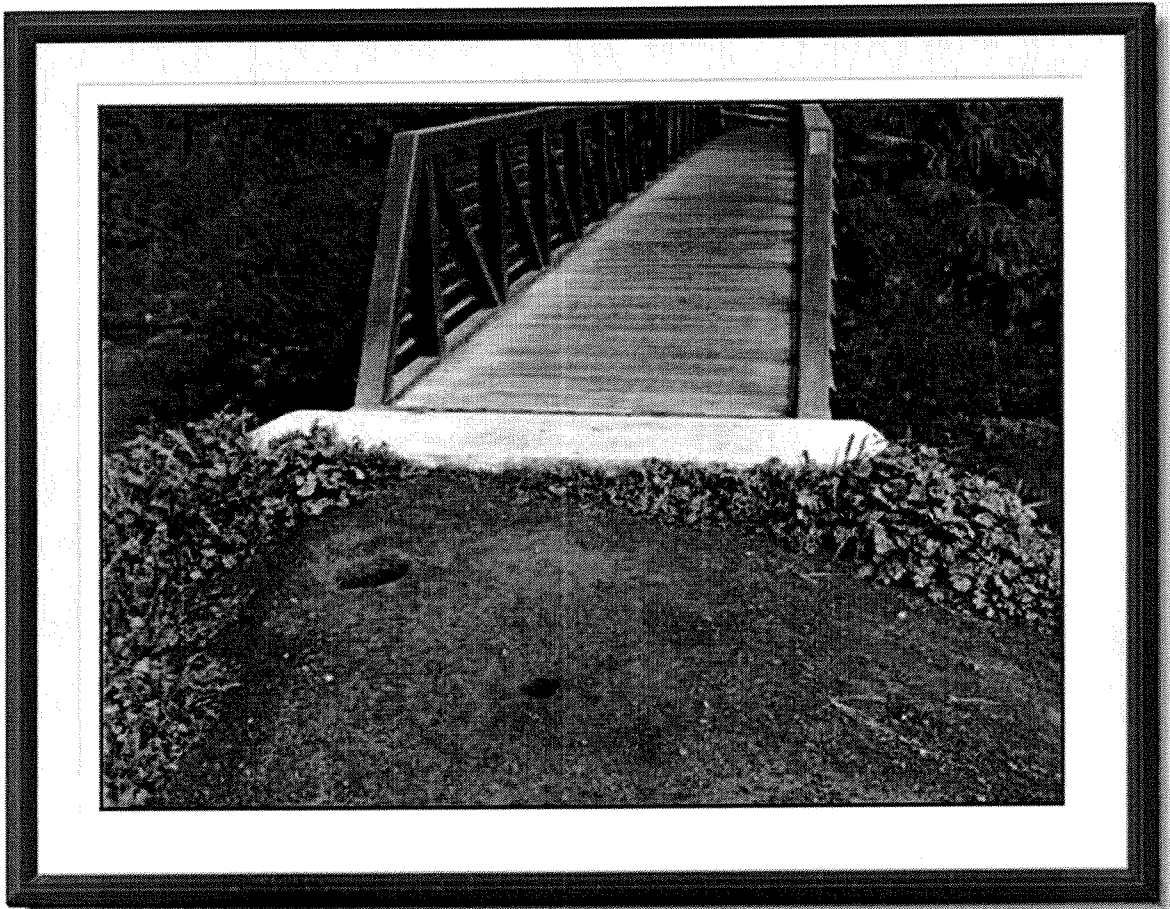
Trail photos from March 31, 2006

At our last meeting we were asked to consider locations to add to a proposed tour. I propose at least part of a section of the Cardinet Trail that runs from behind Keller House and across a couple of foot bridges. This first photo is of the second foot bridge and you can see that the trail is eroding and the gravel has actually washed away from the concrete abutment for the bridge itself. You can also see the beginnings of a couple of small sink holes. Eventually the trail base will need to be repaired.

The second photo is just to show how tall the grass has grown already. The dog you see is quite large, about 85 pounds and you can see the grass is at her shoulders. I would say in spots it was at my knee level, and will be waist high before our regular weed abatement which is typically in May or June.

The third photo is mostly for Gary and the City crew. Near this bridge, someone planted a very small Christmas tree about 11 or 12 years ago. I remember when it used to get knocked over by dogs or bikers - and I never expected it to last. But here it is nearly overshadowing the trail. I notice the same or similar pine tree planted in the median on Clayton Road in the City of Concord. There the lower branches of the trees have been removed - to what appears to be at least a height of 10 -12 feet. Maybe the next time the City Maintenance Crew is working on the trail with chain saws, they could remove the lower branches to at least 7 feet up. That would open up the ground all around the tree and provide an easier access to the trail.

I have not sent this e-mail to the entire committee as I am still nervous about violations of the Brown Act. This is just my recommendation for something to either add to the agenda, or to the proposed tour.









I sent these photos using Adobe(R) Photoshop(R) Elements 4.0. Find out more:
<http://www.adobe.com/photoshopelementswin>