

**PUBLIC ARTS COMMISSION  
CITY OF PALM SPRINGS, CALIFORNIA**

**STUDY SESSION AGENDA**

**Wednesday  
July 26, 2021**



**5:30 PM**

Tracy Merrigan, Chair  
Shawnda Faveau

Russell Pritchard  
Barrett Newkirk  
Gary Armstrong

Cristina Demiany  
Matthew Lesniak

**Pursuant to Executive Order N-29-20, this meeting will be conducted by teleconference and there will be no in-person public access to the meeting location.**

**To join meeting, please use the following link:**

<https://us02web.zoom.us/j/84810174840?pwd=dGluNDgzdTBPQlpyRjJwTHkvYStPd09>

**Meeting ID: 848 1017 4840**

**Passcode: 144585**

**Dial by your location: 669 900 6833 US (San Jose); 253 215 8782 US (Tacoma); 346 248 7799 US (Houston); 301 715 8592 US (Washington DC); 312 626 6799 US (Chicago); 929 436 2866 US (New York)**

**Public comment may also be submitted to [jay.virata@palm Springsca.gov](mailto:jay.virata@palm Springsca.gov). Transmittal prior to the meeting is required. Any correspondence received during or after the meeting will be distributed to the Commission and retained for the official record.**

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**A. CALL TO ORDER**

**B. ROLL CALL**

**C. ACCEPTANCE OF AGENDA**

**D. PUBLIC COMMENTS:** This time has been set aside for members of the public to address the Public Arts Commission on items of general interest within the subject matter jurisdiction of the Commission, and agenda items if the member of the public cannot be present later in the meeting at the time the item is heard by the Commission. Additionally, members of the public may address the Commission on each item listed on the posted agenda at the time each item is heard. Although the Public Arts Commission values your comments, pursuant to the Brown Act, it generally cannot take any action on items not listed on the posted agenda. Five (5) minutes are assigned for each speaker.

**E. STUDY SESSION**

1. Discuss Public Arts Ordinance changes.
2. Commission goals for upcoming season

3. Commissioner's current programs
4. Ideas for upcoming season
5. Study Session with Parks and Recreation Commission on Public Art in Parks
6. Subcommittees to include on September 15th Regular Meeting Agenda
7. Additional Study Session for September 8 to finalize Ordinance recommendations

**ADJOURNMENT:** Adjournment: The Public Arts Commission will adjourn to a Study Session on Wednesday, September 8, 2021 5:30 p.m. via teleconference.

It is the intention of the City of Palm Springs to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant at this meeting, or in meetings on a regular basis, you will need special assistance beyond what is normally provided, the City will attempt to accommodate you in every reasonable manner. Please contact the Office of the City Clerk, (760) 323-8204, at least 72 hours prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible.

Pursuant to G.C. Section 54957.5(b)(2) the designated office for inspection of records in connection with the meeting is the Office of the City Clerk, City Hall, 3200 E. Tahquitz Canyon Way (760) 323-8204.

**AFFIDAVIT OF POSTING**

I, JAY VIRATA, Community & Economic Development Director for the City of Palm Springs, California, certify this Agenda was posted at or before 5:30 p.m. on July 22, 2021, as required by established policies and procedures.

*/s/ Jay Virata*

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Jay Virata, Director  
Community & Economic Development

## SUGGESTED EDITS prior to 7/21/21



To: City Attorney, City Manager

Re: Requested updates to Public Arts Ordinance

*Excerpted from the Public Arts Ordinance:*

Powers and Duties of the Public Arts Commission:

Section 2.24.050 Establish policies and procedures for successful implementation of the arts program such as, but not limited to: selection process of artworks; handling of public controversy; public involvement; economic impact; on-going maintenance of artwork; removal of public art; relationship of program to other City programs.

Summary of Policies and Procedures -- Requested edits in blue

- City Council approval required for expenditures over \$25,000  
City Manager may approve any contract under \$25,000, regardless of type of expenditure  
The Public Arts Commission may approve mini-grants not to exceed \$5000, which do not require contracts, and which may be paid to individuals or organizations.
- Temporary art installations initiated by the Public Arts Commission (including murals\*) of less than \$25,000 do not require City Council approval but may require a temporary use permit; 'temporary' art may be installed for a period of one year or less, after which the Public Arts Commission must review and assess the condition before renewing the approval.
- The Public Arts Commission may contract for services by artists, arts service organizations or businesses for the creation, maintenance, or restoration of art belonging to the City, or on private property with the permission of the owner.
- \*We have also requested that the procedures of the Mural Ordinance be suspended for mural projects of less than \$25,000 if initiated and/or approved by the Public Arts Commission for a period of one year or less.

*Excerpts from the Public Arts Ordinance*

**Proposed Edits Shown in Red:**

2.24.050 Powers and Duties of the Commission. Within the limitations provided by law, the Public Arts Commission shall have the following powers and duties:

- (1) Establish a schedule of regular meeting times.
- (2) Be responsible for a Palm Springs Public Arts Program including policies and guidelines, oversight of development of art projects and maintenance of art collection.
- (3) Unless otherwise directed by the City Council, give approvals or consents required hereunder where actions requiring expenditures from the Public Arts Fund do not exceed \$25,000. Expenditures in excess of \$25,000 shall require Council approval.
- (4) Obtain Council approval for all contracts for commission of, and maintenance for, **permanent** works of art **that exceed \$25,000 in value.** ~~In any amount.~~ Under the direction of the Council, the Commission will act to see that the terms of any agreements are carried out.
- (5) ~~Identify and resolve fundamental issues~~ **Establish policies and procedures** for successful implementation of the arts program such as, but not limited to: selection process of artworks; handling of public controversy; public involvement; economic impact; on-going maintenance of artwork; removal of public art; relationship of program to other City programs.
- (6) Establish a review mechanism for ~~acquisitions~~ **temporary art installations** by commission, purchase, gift or ~~extended~~ loan.  
**Temporary art installations maybe be approved for up to one year, after which the Public Arts Commission may approve it as a permanent installation, subject to approval by the City Council.**
- (7) **The Public Arts Commission may establish procedures for mini-grants, contractual services, matching grants, and programs with other City departments**
- (8) Designate proposed or eligible public arts locations and sites on either publicly or privately owned property;
- (9) Determine the type of artwork or medium desired for a particular site;
- (10) Encourage collaboration with artist(s), architects and planners in the early design phase of a project to ensure a totally integrated solution where public art is proposed for a new project;
- (11) Establish management policies for documentation, registration, maintenance and conservation of all artwork;
- (12) Development a public information program;
- (13) Provide grants or loans to fund public education concerning art, ~~but funded solely through private donations or endowments, and not from any funds collected pursuant to Section 3.37.070 of this code;\*\*\*~~
- (14) Act in an advisory capacity to the planning commission for review of works of art that are privately funded in private property that can be seen from the public right-of-way.  
(Ord. 1479 § 1, 1994)

- (d) Permissible Expenditures:
- (1) The cost of artwork and its installation.
  - (2) The cost of purchase or lease of art sites.
  - (3) Waterworks, landscaping lighting and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the property aesthetic presentation and structural placement of the artwork.
  - (4) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork.
  - (5) Expenditures for maintenance and repair of artworks.
  - (6) Administrative expenses, including legal, to otherwise implement uphold or carry out any provision of this Chapter.
4. (e) Ineligible Expenditures:
- (1) Reproductions of original work except limited editions.
  - (2) Unlimited editions of original work.
  - (3) Mass-produced art objects.
  - (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site.
  - (5) Architectural rehabilitation or historical preservation of buildings.
5. (f) Endowments. The Public Arts Fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in 3.37.040(c) and (d) and when approved by the Commission:

- \*\*\* (1) Art exhibitions or displays.
- (2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other non-profit organizations.

\*\*\* We would like to request that art exhibitions or promotion of art education be considered 'eligible activities, as we have done successfully during the past 3 years.

**ORDINANCE NO. 1479**  
**AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA**  
**AMENDING CHAPTER 2.24 OF THE PALM SPRINGS**  
**MUNICIPAL CODE, AND ADDING A NEW CHAPTER 3.37**  
**THERETO, AND REPEALING SECTION 9311.00 OF THE**  
**PALM SPRINGS ZONING ORDINANCE PERTAINING TO PUBLIC ART**

WHEREAS, the City Council of the City of Palm Springs wishes to maintain the character of Palm Springs and create the best possible environment for the residents; and

WHEREAS, to maintain the aesthetics of the City, the City Council believes that development in the City should be planned and executed with a view toward enhancing the visual character and beauty of the City; and

WHEREAS, in addition to beautifying, the arts can sensitize and humanize, can provide social involvement, and can assist in education, personality development, and community well-being; and

WHEREAS, the City Council previously established a Public Arts Program and Fund pursuant to Chapter 2.24 of the Palm Springs Municipal Code and Section 9311.00 of the Palm Springs Zoning Ordinance; and

WHEREAS, the City wishes to clarify and codify its current Public Arts Program.

NOW, THEREFORE, the City Council of the City of Palm Springs, California, DOES ORDAIN as follows:

SECTION 1. Chapter 2.24 of the Palm Springs Municipal Code shall hereby read in its entirety as follows:

Chapter 2.24

PUBLIC ARTS COMMISSION

Sections:

- 2.24.010 Creation.
- 2.24.020 Term – Vacancies – Vote.
- 2.24.030 Officers – Committees.
- 2.24.040 Meetings – Rules of Procedure.
- 2.24.050 Powers and Duties of the Commission.

2.24.010 Creation. There is hereby created within the City of Palm Springs a Public Arts Commission consisting of seven members, appointed by the City Council, to serve at the pleasure of the City Council.

2.24.020 Term – Vacancies – Vote. Members of the Commission shall serve for the

term provided by Chapter 2.06 of the Palm Springs Municipal Code. A vacancy in the Commission shall not impair the right of the remaining members to exercise the powers of the Commission pursuant to this Chapter. Four members shall constitute a quorum of the Commission, and any ruling, decision or other action of the Commission may be taken by a majority of those members present, provided a quorum is present.

2.24.030 Officers – Committees. The Commission, at its organizational meeting and annually thereafter, shall elect from its membership a chairman and vice-chairman. The chairman and vice-chairman shall have and perform such duties as are commonly associated with their respective titles. The City Manager may appoint an executive secretary and other staff, and provide compensation for their services as may be authorized by the City Council.

2.24.040 Meetings – Rules of Procedure. The Commission shall meet at least once each month at such time and place as shall be fixed by the Commission by its standing rules. A majority of the existing appointed members of the Commission shall constitute a quorum for the transaction of business. The Commission may establish such rules and regulations as it deems necessary for the conduct of its business. In matters relating to the holding of regular and special meetings, the Commission is bound by the provisions of the Ralph M. Brown Act of the State of California (Sections 54950, et seq., California Government Code). (Ord. 1201 3 (part), 1983).

2.24.050 Powers and Duties of the Commission. Within the limitations provided by law, the Public Arts Commission shall have the following powers and duties:

- (1) Establish a schedule of regular meeting times.
- (2) Be responsible for a Palm Springs Public Arts Program including policies and guidelines, oversight of development of art projects and maintenance of art collection.
- (3) Unless otherwise directed by the City Council, give approvals or consents required hereunder where actions requiring expenditures from the Public Arts Fund do not exceed \$25,000. Expenditures in excess of \$25,000 shall require Council approval.
- (4) Obtain Council approval for all contracts for commission of, and maintenance for, works of art in any amount. Under the direction of the Council, the Commission will act to see that the terms of any agreements are carried out.
- (5) Identify and resolve fundamental issues for successful implementation of the arts program such as, but not limited to: selection process of artworks; handling of public controversy; public involvement; economic impact; on-going maintenance of artwork; removal of public art; relationship of program to other City programs.
- (6) Establish a review mechanism for acquisitions by commission, purchase, gift or extended loan.
- (7) Approve all art acquired through the Public Arts Fund, either on City or private property, whether on loan, as a gift or purchase.
- (8) Designate proposed or eligible Public Arts locations and sites on either publicly or privately owned property.
- (9) Determine the type of artwork or medium desired for a particular site.
- (10) Encourage collaboration with artist(s), architects and planners in the early design phase of a project to ensure a totally integrated solution where public art is

- proposed for a new project.
- (11) Establish management policies for documentation, registration, maintenance and conservation of all artwork.
  - (12) Develop a public information program.
  - (13) Provide grants or loans to fund public education concerning art, but funded solely through private donations or endowments, and not from any funds collected pursuant to 3.37.070.
  - (14) Act in an advisory capacity to the Planning Commission for review of works of art that are privately funded on private property that can be seen from the public right-of-way.

SECTION 2. A new Chapter 3.37 is hereby added to the Palm Springs Municipal Code to read in its entirety as follows:

Chapter 3.37

PUBLIC ARTS FEE, FUND AND PROGRAM

Sections:

- 3.37.010 Purpose.
- 3.37.020 Program Execution.
- 3.37.030 Definitions.
- 3.37.040 Public Arts Fund.
- 3.37.050 Projects Subject to Public Arts Program Requirements.
- 3.37.060 Certificates of Occupancy.
- 3.37.070 Requirements to Provide Artwork or Pay Development Fee.
- 3.37.080 Art Site Acceptability.
- 3.37.090 Criteria for Artwork Selection.
- 3.37.100 Maintenance of Artwork.
- 3.37.110 Application Procedures for Placement of Artwork on Private Property.
- 3.37.120 Approval Procedures for Placement of Artwork on Private Property.
- 3.37.130 Procedure for Refund of Public Arts Fee for Art-in-Lieu of Fee.
- 3.37.140 Ownership of Artwork on Private Property.
- 3.37.150 Application Procedure for Donation of Artwork to the City.
- 3.37.160 Review and Acceptance of Artwork Donated to the City.

3.37.010 Purpose.

- (a) The purpose of the Palm Springs Public Arts Program is to develop and maintain a visual arts program for the residents and visitors of Palm Springs; to add to the economic viability of the community; and to enhance the environment and unique character of Palm Springs by providing for the acquisition and maintenance of quality works of public art.
- (b) The City Council finds and declares as follows:
  - (1) Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the City.



- (2) Balanced development of cultural and artistic resources preserves and improves the quality of the urban environment and increases real property values.
- (3) As development and revitalization of the real property within the City continues, the opportunity for creation of cultural and artistic resources is diminished.
- (4) As this development and revitalization continues as a result of market forces, urbanization of the community results.
- (5) As these opportunities are diminished and this urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased.
- (6) Development of cultural and artistic assets should be financed by those whose development and revitalization diminishes the availability of the community's resources for those opportunities and contributes to community urbanization.
- (7) Establishment of this Public Arts Program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
- (8) It is the purpose of this Chapter to modify, clarify and codify the City's existing Public Arts Program.

3.37.020 Program Execution. The Palm Springs Public Arts Commission shall carry out the duties established by this Chapter.

3.37.030 Definitions. For the purpose of this Chapter:

- (1) "Commission" shall mean the Palm Springs Public Arts Commission.
- (2) "Public Arts Fund" shall mean a separate fund and account which is established to receive monies collected for the designated purposes of the Public Arts Program.
- (3) "Public Arts Program" shall mean the program adopted by the City Council of Palm Springs.
- (4) "Arts Administrator" shall mean the staff person hired by the City to administer the Public Arts Program. The salary and other compensation of the Arts Administrator, may be paid from the Arts Fund to the extent such person is performing the duties prescribed herein.

3.37.040 Public Arts Fund.

- (a) Creation. There is hereby established a "Public Arts Fund" into which shall be deposited all funds collected under this Chapter of the Palm Springs Municipal Code and such other funds as may be appropriated by the City Council or donated to the City for expenditures in conjunction with the Public Arts Program.
- (b) Accounting. This fund shall be maintained by the City Treasurer, with accounting records established to sufficiently identify and control these funds. Expenditures shall be processed through the City's established warrant payment procedure.
- (c) Use of Fund. The funds shall be used solely for the acquisition, installation,

improvement, maintenance and insurance of artwork to be displayed in the city and the administration of the Public Arts Program.

(d) Permissible Expenditures:

- (1) The cost of artwork and its installation.
- (2) The cost of purchase or lease of art sites.
- (3) Waterworks, landscaping lighting and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the property aesthetic presentation and structural placement of the artwork.
- (4) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork.
- (5) Expenditures for maintenance and repair of artworks.
- (6) Administrative expenses, including legal, to otherwise implement uphold or carry out any provision of this Chapter.

(e) Ineligible Expenditures:

- (1) Reproductions of original work except limited editions.
- (2) Unlimited editions of original work.
- (3) Mass-produced art objects.
- (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site.
- (5) Architectural rehabilitation or historical preservation of buildings.

(f) Endowments. The Public Arts Fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in 3.37.040(c) and (d) and when approved by the Commission:

- (1) Art exhibitions or displays.
- (2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other non-profit organizations.

(g) Replacement. For those artworks that have been purchased with monies from the Public Arts Fund or donated to the City, the City Council may determine to sell or exchange existing artworks for replacement artworks. Any funds obtained from the sale of artwork shall be credited to the Public Arts Fund.

3.37.050 Projects Subject to Public Arts Program Requirements.

(a) Requirements. Except as provided below in 3.37.050(b), the requirements of this Chapter shall apply to all works of construction and rehabilitation for which a building permit is required, including, but not limited to:

- (1) New commercial and industrial construction.

- (2) Remodeling or reconstruction of existing commercial or industrial property.
  - (3) New residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer.
  - (4) New individual single-family residential units constructed on a lot located in an existing subdivision whose building permit valuation is over \$100,000.
- (b) Exceptions. The requirements of this Chapter shall not apply to the following activities:
- (1) Public projects undertaken by any agency of the City, the State, County, School District or any other governmental entity.
  - (2) Remodeling, repair or reconstruction of structures to comply with earthquake seismic safety code standards or which have been damaged by fire, flood, wind, earthquake or other calamity.
  - (3) Remodeling, repair or reconstruction of residential units.
  - (4) Nonprofit social service or cultural institution projects.
  - (5) Low to moderate housing projects as defined by household income Health and Safety Code Section 50093.
  - (6) Affordable housing developments receiving City, State or Federal assistance.
  - (7) Private educational institutions which provide general education equivalent to the public school system (kindergarten through high school or any part thereof).
  - (8) Architectural rehabilitation or historical preservation of properties which are designated as Class 1 Historic Sites by the City Council.

3.37.060 Certificates of Occupancy.

- (a) No final City approval, such as final inspection or a certificate of occupancy, for any project subject to this Chapter shall be granted or issued unless and until full compliance with the Public Arts Program is achieved, in one or more of the following ways:
- (1) The approved artwork has been placed in a manner satisfactory to the Public Arts Commission.
  - (2) In-lieu art fees have been paid.
  - (3) Financial security in an amount equal to the acquisition and installation costs of an approved artwork, in a form approved by the City Attorney, has been posted.
  - (4) An approved artwork has been donated and accepted by the Public Arts Commission.
- (b) Full compliance with the Public Arts Program shall not be deemed to exist until the entire Program Allocation for the project, as defined in 3.37.070 has been

provided.

3.37.070 Requirement to Provide Artwork or Pay Development fee.

- (a) The applicant shall be deemed to have satisfied his or her obligations under this Chapter through the placement of artwork in a manner consistent with this Chapter, valued at an amount equal to the Program Allocation.
- (b) In-lieu of placement of an approved artwork, the applicant may, at his or her discretion, pay to the City for deposit into the Public Arts Fund an amount equal to the Program Allocation set forth in 3.37.070(d).
- (c) Fees are to be collected with respect to all projects prior to issuance of a building permit, except in the case of residential developments of more than one dwelling unit, where the fee shall be collected on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first.
- (d) The Program Allocation, as used in this Chapter, is the percentage of the building cost which is set aside for the City's Public Arts Program. The total building valuation shall be computed using the latest Building Valuation Data as set forth by the International Conference of Building Officials (ICBO) unless, in the opinion of the Building Official, a different valuation measure more accurately represents the value of the building. Excluding land acquisition and off-site improvement costs, the program allocation shall be an amount equal to the percentage of the total building valuation for an applicable project, as listed herein:
  - (1) One half of one percent ( $\frac{1}{2}\%$ ) for new commercial and industrial construction.
  - (2) One half of one percent ( $\frac{1}{2}\%$ ) for remodel or reconstruction of existing commercial or industrial property.
  - (3) One quarter of one percent ( $\frac{1}{4}\%$ ) for new residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer. A project shall be considered a development of two or more units when two or more building permits are issued to the same person for development of new residential structures within a one hundred and eighty (180) day period.
  - (4) One quarter of one percent ( $\frac{1}{4}\%$ ) for new individual single-family residential units constructed on a lot located in an existing subdivision for that portion of building permit valuation in excess of \$100,000.
- (e) Nothing in this Section shall prohibit the applicant from placing an approved artwork with acquisition and installation costs in an amount less than the Program Allocation; provided that the applicant shall also pay to the Public Arts Fund an amount equal to the difference between the Program Allocation and the costs of acquisition and installation of such artwork.
- (f) Nothing herein shall restrict the City Council from waiving the requirements of this Chapter, in whole or in part, with respect to any project otherwise subject to the provisions of this Chapter, provided that the City Council determines that the

Project Applicant has entered into an agreement with the City providing for the applicant's acquisition and installation of artwork in connection with the development of the project which addresses the goals and aims of this Chapter in a manner equally or more favorable to the City than would be achieved by strict compliance with this Chapter. In such an event, the City Council shall make findings to this effect on the basis of substantial evidence.

3.37.080 Art Site Acceptability.

- (a) Placement of art by applicant. The applicant shall place artwork in outdoor areas of the private property that are accessible and used by the public a minimum of eighteen (18) hours per day. Interior spaces, including lobbies, courtyards, malls, etc., may be eligible if they are accessible to the public a minimum of twelve (12) hours per day.
- (b) Art purchased through Public Arts Fund. When selecting the location for art purchased through the Public Arts Fund, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites.

3.37.090 Criteria for Artwork Selection.

- (a) Eligibility requirements for each project will be established by the Public Arts Commission. Specifically excluded are artworks done by students under the supervision of art instructors to satisfy course requirements and artists who are members of the Public Arts Commission. The following criteria shall be considered in the selection of artwork:
  - (1) Quality of the artwork.
  - (2) Media – all visual art forms may be considered, subject to limitations set by the selection jury or the Arts Commission.
  - (3) Style – artworks of all schools, styles, and tastes should be considered for the City Collection.
  - (4) Environment – artworks and art places should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate.
  - (5) Permanence -- consideration should be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance, and repair costs.
  - (6) Elements of design - consideration should take into account that public art, in addition to meeting aesthetic requirements, also may serve to establish focal points, terminate areas, modify, enhance, or define specific spaces, or establish identity.
  - (7) Diversity - The Public Arts Program should strive for diversity of style, scale, media, artists - including ethnicity and gender and equitable distribution of artworks and art places throughout the City.

- (b) The following methods may be used to select artwork:
- (1) Direct purchase: A completed work of art may be purchased for a specific project or location.
  - (2) Direct commission: An artist may be chosen directly by an artist-selection jury and paid to submit a proposal. Artists will be selected on the basis of their qualifications for a particular project and its probability of successful completion.
  - (3) Limited competition: A small number of artists may be invited and paid by the selection jury to submit proposals.
  - (4) Open competition: Any artist may apply subject to limitations established by the selection jury. No proposal fee is paid to artists, however, a small number of finalists may be selected to submit details, models or plans for which a fee is paid.
- (c) In selecting an artwork, the Arts Commission may appoint a selection jury of qualified persons. The jury shall be subject to the provisions of the Brown Act.
- (d) Review by Department of Planning and Zoning - A Department of Planning and Zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance.

#### 3.37.100 Maintenance of Artwork on Public and Private Property.

- (a) Public artwork on public property. A maintenance fund shall be established as part of the Public Arts Program. Procedures for custody, maintenance and conservation of artworks shall be established by the Public Arts Commission as well as a maintenance schedule. Specific instructions for care of each work shall be kept on file as part of the collection management. The Public Arts Commission will strive to include maintenance provisions in the artwork contracts stipulating the length of time (typically one year) the artist will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal on repair contracts within a fair market rate of remuneration. Regular inspection-for-condition reporting shall be conducted so that the collection is maintained in the best possible condition as supervised by designated City personnel. When necessary, a conservation plan will be established prioritizing the work which is to be done.
- (b) Private artwork on private property. The obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. Art installed on or integrated into a construction project pursuant to the provisions of this Chapter shall not be removed or altered without the approval of the Public Arts Commission. Artwork installed pursuant to this Chapter shall be maintained as specified in the written agreement between the City and the private property owner with regard to that artwork. Maintenance of artwork, as used in this Chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the City, protection of the artwork against physical defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism and other similar acts in an

amount to be determined by the City Attorney. Prior to placement of an approved artwork, applicant and owner of the site shall execute and record a covenant in a form approved by the City for maintenance of the artwork. Failure to maintain the artwork as provided herein is hereby declared to be a public nuisance. If the artwork is not maintained in the manner prescribed, or is removed or altered without approval of the Public Arts Commission, in addition to all other remedies provided by law, the City may, upon reasonable notice, perform all necessary repairs, maintenance, secure insurance, or take such legal or other action deemed necessary to have the artwork maintained and if necessary, restored, and the costs therefore shall become a lien against the real property.

3.37.110 Application Procedures for Placement of Artwork on Private Property. Any artwork being placed on private property as part of the City's Public Arts Program shall be a one-of-a-kind piece. The City encourages applicant's to submit an application prior to the development of the architect's schematic design. The requirements and procedures for the processing of a Public Arts Program proposal application (an "arts application") shall be as follows:

- (1) Upon submission of a development project application for a project subject to the requirements of this Chapter, the Department of Planning and Zoning shall provide to the project applicant a copy of this Chapter, an arts application form and the name and telephone number of the City's Art Administrator.
- (2) The project applicant shall submit to the Arts Administrator the completed arts application form, describing the manner in which the project applicant intends to comply with this Chapter.
  - (1) The arts application shall include:
    - (A) Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork.
    - (B) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs.
    - (C) Preliminary plans containing such detailed information as may be required by the Public Arts Commission to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development (the artwork shall be an integral part of the landscaping and/or architecture of the building), including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods if necessary to evaluate the proposal; and,
    - (D) A narrative statement to demonstrate that the artwork will be displayed in an area open and freely available to the general public, or otherwise provide public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site.
    - (E) Maintenance factors required to insure its permanence.

3.37.120 Approval Procedures for Placement of Artwork on Private Property.

- (A) The application for the proposed artwork and its placement will be considered at a monthly public meeting of the Palm Springs Public Arts

Commission. A Department of Planning and Zoning representative will also review the artwork and its placement and landscaping elements and may refer the application to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance. Any changes, questions or recommendations shall be conveyed in writing to the applicant. The Commission will determine when all issues have been addressed and accept or reject the artwork. The applicant will be notified in writing of the Public Arts Commission's decision.

- (B) If the applicant proposes or the Planning Commission or City Council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to the receipt of the Public Arts Commission's approval, the application shall, if legally permitted, be returned to the Public Arts Commission for further review and recommendation concerning the revised proposal prior to final approval unless the Council otherwise directs.
- (C) A contract between the City and the applicant spelling out all requirements, including insurance and maintenance, shall be executed prior to the City's formal acceptance of the applicant's art-in-lieu proposal.

3.37.130 Procedure for Refund of Public Arts Fee for Artwork-in-Lieu of Fee. If in-lieu artwork has been placed subsequent to payment of a public art fee, the applicant shall submit to the Arts Administrator a written request for refund of the amount spent on artwork placed on the applicant's property. The amount to be refunded shall not exceed the amount that would have been paid into the Public Arts Fund should the applicant have chosen to pay a fee instead of placing artwork on the site. The request for reimbursement shall be submitted after the artwork is installed, approved by the Public Arts Commission and accepted by the City.

3.37.140 Ownership of Artwork on Private Property. Artwork placed on the applicant's property by the applicant in satisfaction of the applicant's program requirement shall remain the property of the applicant.

3.37.150 Application Procedure for Donation of Artwork to the City. The prospective donor shall submit to the Arts Administrator:

- (1) Sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork to be donated.
- (2) Additional samples of artist's work other than the proposed donation.
- (3) Background information on artist who created the proposed donation.
- (4) Installation costs, if available.
- (5) Maintenance factors required to insure its permanence.

3.37.160 Review and Acceptance of Artwork Donated to the City. The proposed donation will be considered at a monthly public meeting of the Public Arts Commission. All details of the proposed donation, including the feasibility and expense of placing and caring for the work of art will be considered. The Commission will review and discuss the donation and will direct the Arts Administrator as to any questions to be asked of the donor or artist. A personal appearance by artist may be requested. The Commission will determine when all issues have been addressed and accept or reject the artwork.



SECTION 3. Section 9311.00 of the Zoning Ordinance of the City of Palm Springs is hereby repealed and of no further force or effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after passage.

SECTION 5. PUBLICATION. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance, and to cause the same or a summary thereof or a display advertisement, duly prepared according to law, to be published in accordance with law.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

AYES:

NOES:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

By: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

REVIEWED AND APPROVED:

\_\_\_\_\_

Palm Springs Municipal Code						
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<a href="#">Title 5 BUSINESS REGULATIONS</a>						

## Chapter 5.81 ART MURALS ON PRIVATE PROPERTY

### 5.81.010 Purpose.

- (a) This Chapter is intended to enact a process and procedures for the installation of original art murals on private property and further the public interest by: (i) encouraging artistic expression; (ii) fostering a sense of pride; (iii) preventing vandalism at mural sites through the installation of murals that vandals are reluctant to disturb; (iv) preserving existing murals that are a valued part of the history of the City; and (v) visually activating dormant and/or vacant properties and construction sites.
- (b) The City may consider the installation of murals and, at the same time, wishes to prevent the proliferation of off-site commercial signs. Therefore, the City's mural regulations do not allow commercial advertising.
- (c) Mural regulations also promote public safety and welfare by ensuring the following objectives are achieved:
1. The design, construction, installation, repair, and maintenance of such displays will not interfere with traffic safety or otherwise endanger public safety.
  2. Regulation will provide reasonable protection to the visual environment by controlling the size, height, spacing, and locations of such displays.
  3. The public will enjoy the aesthetic benefits of being able to view such displays in numbers and sizes that are reasonably and appropriately regulated.
  4. To impose permit requirements and regulations for murals. (Ord. 1948 § 1, 2018; Ord. 1853 § 4, 2014)

### 5.81.020 Definition.

Pursuant to Section 93.20.03 of this Code, a "mural" means a painting or artwork temporarily or permanently affixed to a building wall, freestanding wall, or fence, which can be seen from the public right-of-way, and is distinguished from signage in that it does not advertise a business, commercial endeavor, or product sold or offered on the site or off-site. (Ord. 1948 § 1, 2018)

### 5.81.030 Permit required.

- (a) It is unlawful for any person, firm, or corporation to authorize, erect, construct, maintain, move, alter, change, place, suspend, or attach any mural within the City without first obtaining the necessary permits.
- (b) An application for a mural shall be submitted to the Planning Department to be assessed by City staff for compliance with this Code. The application shall include a maintenance plan be submitted for review and approval.
- (c) An application for a mural shall be submitted with the notification fees and Mural Application Permit Fee, as established by resolution of the City Council.
- (d) Applications for short-term, "event specific" murals may also be approved, with a time duration as established by the City Council. All fees, permits, procedures, and requirements as otherwise specified in this Chapter shall apply to short-term event specific murals. (Ord. 1948 § 1, 2018; Ord. 1853 § 4, 2014)

### 5.81.040 Procedure.

- (a) Prior to any action by the Public Arts Commission, the Planning Department shall send notice of such application to all property owners within 500 feet of the location of the mural at least 10 days prior to the Public Arts Commission consideration of the mural. No mural shall be permitted until the Planning Department has certified that notification has been completed.
- (b) The Planning Department shall submit the application to the Public Arts Commission who shall review the proposal, solicit public comment, and make a recommendation to the City Council based on the artistic merit and execution of the proposed art.
- (c) The Planning Department shall submit the application to the City Council for authorization.
- (d) For a proposed mural on any Class 1 historic site, the application shall be referred to the Historic Site Preservation Board for recommendation prior to authorization by the City Council. (Ord. 1948 § 1, 2018; Ord. 1853 § 4, 2014)

### 5.81.050 Requirements.

- (a) The owner of the property on which a mural is installed, shall execute and deliver to the Office of the City Clerk a covenant for recordation in a form approved by the City Attorney. The covenant shall provide that the mural will be installed and maintained at all times in full compliance with this Chapter. In addition, the covenant shall remain in force for as long as the mural exists.
- (b) Upon a change of ownership of the property to which a mural is installed, the new owner may, at the owner's election and without the need for permission from the City, terminate the covenant and remove the mural, subject to the provisions of this Chapter. (Ord. 1948 § 1, 2018; Ord. 1853 § 4, 2014)

### 5.81.060 Regulations.

An approved mural shall comply with all of the provisions of this Section:

- (a) Any alteration to an approved mural shall require approval in accordance with the procedures listed in Section [5.81.040](#). An "alteration" includes any change to a permitted mural, including, but not limited to, any change to the image(s), materials, colors, or size of the permitted mural. "Alteration" does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time or that result from the maintenance or repair of the mural. Such minor changes may include slight and unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or as a result of vandalism.
- (b) No part of a mural shall exceed the height of the structure to which it is tiled, painted, or affixed.
- (c) No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted, or affixed.
- (d) Unless otherwise authorized by City Council upon making findings of no resulting impacts, no mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).
- (e) No mural shall be placed on a lot that is improved with only one single-family residential structure and accessory structures.
- (f) No mural shall be arranged and illuminated in a manner that will produce light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.
- (g) Digitally printed image murals shall receive approval of both the Fire Department and Department of Building and Safety.
- (h) A mural shall not be created without the final authorization of the Palm Springs City Council. (Ord. 1948 § 1, 2018; Ord. 1853 § 4, 2014)

### 5.81.070 Violations.

- (a) Nuisance. Any mural created and installed without City approval pursuant to this Chapter, or any mural that is not maintained in accordance with the approved maintenance plan, is and shall be deemed "graffiti" as that term is defined by Section [11.72.172](#) of this Code, and is a public nuisance pursuant to Section [11.72.174](#), subject to abatement pursuant to Chapter [11.72](#) and the specific penalties and remedies enumerated herein, including without limitation collection by lien or special assessment.
- (b) Administrative Penalty. Any person who creates, allows to be created, causes or otherwise maintains any mural identified as a public nuisance pursuant to this Chapter is guilty of a violation of this Subsection, and is subject to an issuance of administrative citation as follows. Prior to the issuance of a citation hereunder, the City shall issue notice to any person that violates this Subsection (b), giving that person thirty (30) days from the issuance of the notice to remove the mural created and installed without City approval. If the mural is timely removed in compliance with the City notice issued, no citation shall issue. If the mural is not timely removed, an administrative citation shall issue with a fine in the amount of one thousand dollars (\$1,000.00). In the event the mural is not removed within forty five (45) days of the issuance of the City's notice, a second administrative citation shall issue with a fine in the amount of two thousand five hundred dollars (\$2,500.00). In the event the mural is not removed within sixty (60) days of the issuance of the City's notice, a third administrative citation shall issue with a

fine in the amount of five thousand dollars (\$5,000.00). As an alternative to removing the mural, a person subject to administrative penalty and citation may apply to the City for approval of the mural pursuant to Section [5.81.040](#). No mural that has been subject to administrative penalty and citation, however, shall be approved unless the applicable fine has been paid in full.

(c) Civil Actions. Any person who creates, allows to be created, causes or otherwise maintains any mural identified as a public nuisance pursuant to this Chapter shall be subject to a civil action undertaken pursuant to Section [1.01.240](#), including reimbursement of city costs and an award of attorneys' fees.

(d) Cumulative Remedies. In addition to, and not in lieu of, any other remedy allowed by law, all remedies prescribed under this Section [5.81.070](#) are cumulative, and the election of one or more remedies does not bar the City from pursuit of any other remedy, criminal, administrative or civil, which may be pursued by the City to enforce this Chapter and/or address any violation hereof. (Ord. 1948 § 1, 2018)

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View the [mobile version](#).

## RESOLUTION REQUESTING CHANGES TO THE MURAL ORDINANCE

Whereas, in January 2014, the Palm Springs City Council approved an Ordinance regarding the Regulation of Original Art Murals, which was amended and superseded in January 2018 to enable a shorter timeframe for approval and less work and expense for both applicant and staff.

Whereas, the original purpose of the Ordinance was to clearly differentiate Art Murals from signs, and the Public Arts Commission has reviewed and approved more than a dozen murals since 2018, while providing advice on meeting the requirements of the ordinance.

Whereas, the administrative process and costs of formally applying for a mural still remain a barrier to mural production, particularly for non-profits, which has been mitigated by the assistance of the Public Arts Commission.

Whereas, to help murals thrive in Palm Springs and recognize the vital cultural self-expression murals represent, the City must work to simplify the path forward to create legal murals.

The Public Arts Commission believes that this can be accomplished by exempting murals sponsored or commissioned by the Commission from the review process outlined in the Art Mural Ordinance, as long as the mural meets the conditions outlined below.

The Public Arts Commission therefore requests that the City Attorney prepare and present to the City Council revisions to the Art Mural Ordinance that would exempt murals approved by the Public Arts Commission from the process outlined in the Ordinance if the mural meets the following requirements:

- 1) The mural has been commissioned or sponsored by the Public Arts Commission, with a cost of \$25,000 or less, and is intended as a temporary installation for no more than 18 months (at which time it must be reviewed by the Public Arts Commission for approval to remain longer.)
- 2) The mural contains no logos or text that advertise or relate to any business, service or product offered by a commercial entity.
- 3) The mural is created using only paint or ceramic tiles and complies with the current mural requirements as far as materials or attachment to walls.

Murals that do not meet these requirements, in terms of materials, cost, or permanence, will still be required to complete the mural approval process as outlined in the Ordinance.

Approved by the Public Arts Commission on March 17, 2021

## Shawnda's Public Arts to do's:

1) Coloring book proposal for Traffic box project & call for new artists

2) Proposal for Tysen to seal the garden dome

3) Monday fitness public arts course meeting

4) George Floyd relocation to  
Convention center  
Holland Farms  
Downtown park

5) A section 14 bench at convention center on section 14 site

6) Section 14 mural

7) Push for a removal and or Performance art at Bogart site with history of section 14

8) Richard Wyatt Mural restoration

9) Wishing well artist educational workshop

10)Black history parade and Juneteenth celebration  
2022

**Projects submitted by Tracy Merrigan, Acting Chair PSPAC 7/20/2021 for discussion**

**Neighborhood Grant Project**

**Public Art Master Class with Palm Springs High School  
Production and installation of student public art piece  
Commissioner Project Lead Tracy Merrigan**

Location to be installed: TBD and dependent upon student work selected

Sculpture Installation Target: 2021-22 Season

TBD Jury: Cara Iverson (Palm Springs High School, art instructor and class host), Sandra Lyon, Ed.D. Superintendent, Sofia Enriquez (artist), Ryan Campbell (artist), Sarah Scheideman (co-instructor), Tracy Merrigan (co-instructor and commissioner) and additional Public Arts Commissioner

Artist Mentor: TBD, local artist mentor will provide design, production, installation advice and management. Mentor will be selected for expertise in the medium of selected art piece.

Budget Estimate:

Artist (student) Fee: \$500

Construction: \$3500

Mentor Fee: \$1500

Installation: \$750-1000

Student Exhibition: \$500

Student Exhibition - a community show highlighting Palm Springs High School student public art designs over 3 classes - 2 taking place during the COVID shutdown and 1 just prior. Show was originally designed to be hung in a downtown space visible from the sidewalk for socially distanced viewing and feature an opening night viewing of the work closeup. The exhibit will be shared online as well. Student exhibition will take place over 2021 season. The location and setting for show may evolve due to COVID restrictions.

**Celebrating The Historical Ground-Breaking Female Leaders of Palm Springs  
Mural**

**Commissioner Project Lead: Tracy Merrigan**

Location: Welwood Murray Library

Dedication Goal: Women's History Month March 2022

Programming to include: Lecture on the history of Palm Springs Women's Leadership, lecture on contemporary female leadership and docent tours of downtown PS public art collection

Collaboration: Collaboration with Public Arts Commission and Palm Springs Historical Society

Artist: Will be determined by Call for Artists

TBD Jury: Protem Mayor Lisa Middleton (to request), Palm Springs Historical Society Representative, Library Trustees Representative, Jeannie Kays, Director Library Services, Commissioner Tracy Merrigan and additional Public Arts Commissioner

Budget Estimate:

Artist and Production Fee: \$20,000

(There is a new program to replace the pole banners which could impact this project)

**I Love PS Street Pole Banners - Phase One**  
**Public Art Celebration of Palm Springs Neighborhoods through artistic photography**  
**Project Lead: Tracy Merrigan**

This will be a Call for Artists to submit designs for a series of five pole banners to be installed along Palm Canyon Drive.

Artists will celebrate their love of one specific Palm Springs neighborhood in a series of five banners.

Final artist submissions will provide hi-res files for digital printing to specified sign vendor.

Phase One will feature 8 neighborhoods. Neighborhoods will be chosen by random drawing at a PS ONE Neighborhood Mtg by Denise Goolsby.

The Call for Artists will be for the specific neighborhoods chosen.

Installation Target: negotiated with city for slow banner rental times, ideally 3 months over summer into fall.

Jury: PS ONE Neighborhood Representative, Denise Goolsby, photographer Lance Gerber, Tracy Merrigan and Sarah Scheideman

Final banner size 24" x 63"

Banners will be printed double-sided

Budget Estimate:

Artist Fee: \$500 per artist (100 per banner) \$2000 for 8 neighborhoods (Phase One)

Banner Production Estimate (Image 360): \$1750

Installation and Removal: \$1000

City Banner Pole Rental: ask to be waived



# 2021 BROWN ACT



**BEST BEST & KRIEGER** LLP  
ATTORNEYS AT LAW

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If you would like to receive additional copies of this handout or would like more information on BB&K Brown Act trainings, please contact [events@bbklaw.com](mailto:events@bbklaw.com).

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**2021 - THE BROWN ACT**

As amended by Chapter 89 Statutes of 2020 (AB 992)  
(New language **highlighted**; repealed language ~~lined-out~~)

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**THE RALPH M. BROWN ACT**  
(Government Code Sections 54950 - 54963)

**POLICY STATEMENT**

**§54950. Declaration, Intent; Sovereignty**

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.

**COVERAGE OF THE BROWN ACT**

**§ 54950.5. Title of Act**

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

**§ 54951. Local Agency, Definition**

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. Legislative Body, Definition**

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, decision-making or advisory, created by charter,

ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that 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, limited liability company, or other 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, limited liability company, or other 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, limited liability company, or other 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, limited liability company, or other 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.

### **§ 54952.1. Newly Elected Members**

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. Meeting, Definition**

(a) As used in this chapter, “meeting” means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) “Discuss among themselves” means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) “Internet-based social media platform” means an online service that is open and accessible to the public.

(iii) “Open and accessible to the public” means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval by the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

(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 that do not violate subdivision (b).

(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.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

### **§ 54952.3. Meetings; Simultaneous**

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of

compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

#### **§ 54952.6. Action Taken, Definition**

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. Copies of Chapter to Members of Legislative Body of Local Agencies**

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.

### **OPEN MEETINGS AND RELATED REQUIREMENTS – AGENDAS AND PUBLIC HEARINGS**

#### **§ 54953. Meetings to be Open and Public; Attendance**

(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, except as provided in subdivision (d). 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) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is

to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), when a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and that number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

#### **§ 54953.1. Testimony of Members Before Grand Jury**

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.

**§ 54953.2. Protections and Prohibitions Under the Americans with Disabilities Act of 1990**

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

**§ 54953.3. Conditions to Attendance**

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. Right to Record Proceedings; Retention of Recordings**

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

(b) Any audio or video recording 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 recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

#### **§ 54953.6. Right to Broadcast Proceedings**

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.

#### **§ 54953.7. Access to Meetings Beyond Minimal Standards**

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.

#### **§ 54954. Rules for Conduct of Business; Time and Place for Holding Regular Meetings**

(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.

(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:

(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 non-adversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the 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. Mailed Notice of Meetings, On Request Therefor: Charge**

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. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. 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. Agenda; Posting; Action or Discussion on Other Matters**

(a) (1) 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 and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) 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 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.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

### **§ 54954.3. Opportunity for Public to Address Legislative Body; Regulations**

(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.

(b) (1) 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.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(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.

#### **§ 54954.4. Reimbursement for Costs**

(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. Closed Session Item Descriptions**

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**

(Paragraph (1) of subdivision (d) 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 paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

*(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)*

Initiation of litigation pursuant to paragraph (4) of subdivision (d) 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**

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:

**THREAT TO PUBLIC SERVICES OR FACILITIES**

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

**PUBLIC EMPLOYEE APPOINTMENT**

Title: (Specify description of position to be filled)

**PUBLIC EMPLOYMENT**

Title: (Specify description of position to be filled)

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Title: (Specify position title of employee being reviewed)

**PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release 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:

**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:

**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.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

**CONFERENCE INVOLVING A JOINT POWERS AGENCY** (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

**AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE**

**§ 54954.6. Public Hearing Required Prior to Adoption of New Or Increased Taxes Or Assessments**

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

(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 or businesses 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 or business 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, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, 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) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. 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 telephone 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 decision-making 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. Adjournment of Meetings**

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 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. Continuance of Meeting to Subsequent Meeting**

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 re-continued 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.

**§ 54956. Special Meetings; Call; Notice**

(a) 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 and posting a notice on the local agency's Internet Web site, if the local agency has one. 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.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section

3511.1. However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

#### **§ 54956.5. Emergency Meetings in Emergency Situations**

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), 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.

(2) Each local newspaper of general circulation and radio or television station that 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, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a 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.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) 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.

(e) 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. Fees**

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.

## **EXCEPTIONS TO THE OPEN MEETING REQUIREMENT - TOPICS FOR CLOSED SESSION**

### **§ 54956.7. Closed Sessions, License Applications; Rehabilitated Criminals**

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.

### **§ 54956.75. Audit by the State Auditor's Office; Closed Meeting to Discuss Response**

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

**§ 54956.8. Real Property Transactions; Closed Meeting With Negotiator**

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.

**§ 54956.81. Closed Sessions; Specific Pension Fund Investments**

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

**§ 54956.86. Closed Sessions, Legislative Body of Private Corporations; Federally Protected Information**

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. Records of Certain Health Plans; Meetings on Health Plan Trade Secrets**

(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 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, formulas 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 (f), 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) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. 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 Managed Health Care 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.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

#### **§ 54956.9. Pending Litigation; Closed Session; Abrogation of Privilege**

(a) 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.

(b) 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.

(c) 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.

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

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

(2) 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.

(3) 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 (2).

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

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

(1) 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.

(2) 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.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) 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.

(4) 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.

(5) 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).

(g) 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 paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), 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.

(h) 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.

**§ 54956.95. Closed Sessions; Joint Powers Insurance Authorities**

(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.

**§ 54956.96. Closed Session; Joint Powers Agencies**

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.



(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California, or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California, or its successor entity, in lieu of a local agency member's regularly appointed member, to attend closed sessions of the Clean Power Alliance of Southern California, or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California, or its successor entity, who is not a member of the legislative body of a local agency member, and that is presented to the Clean Power Alliance of Southern California, or its successor entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

(i) Legal counsel of that local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member.

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California, or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California, or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California, or its successor entity.

(c) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a) or (b), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

**§ 54956.97. Public Bank; Governing Board or Committee of Governing Board; Closed Session.**

Notwithstanding any provision of law, the governing board, or a committee of the governing board, of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

- (a) A loan or investment decision.
- (b) A decision of the internal audit committee, the compliance committee, or the governance committee.
- (c) A meeting with a state or federal regulator.

**§ 54956.98. Public Bank; Policy or Bylaw; Information From a Closed Session Considered Confidential**

- (a) For purposes of this section, the following definitions shall apply:

(1) “Shareholder, member, or owner local agency” or “shareholder, member, or owner” means a local agency that is a shareholder of a public bank.

(2) “Public bank” has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member, or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member, or owner local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that shareholder, member, or owner local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that shareholder local agency.

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member, or owner local agency.

(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member, or owner local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member, or owner local agency’s regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member, or owner local agency, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the public bank governing board pursuant to paragraph (1) of subdivision (b).

**§ 54957. Closed Sessions; Discussion of Employee/Independent Contractor; Exclusion of Witnesses**

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency 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.

(2) 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.

(3) 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.

(4) For the purposes of this subdivision, 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. This subdivision shall not 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 subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

**§ 54957.1. Closed Sessions; Public Report of Decisions**

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

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

(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 follows:

(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.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(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 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 subdivision (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.

(f) This section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

#### **§ 54957.2. Minute Book Record of Closed Sessions; Inspection**

(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).

## **ENFORCEMENT REQUIREMENTS**

### **§ 54957.5. Agendas and Other Writings Distributed for Discussion or Consideration at Public Meetings; Public Records; Inspection; Closed Sessions**

(a) Notwithstanding Section 6255 or any other 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 an open 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, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location



on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

(c) 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. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(d) This chapter shall not 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 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) 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). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

**§ 54957.6. Closed Sessions; Salaries, Legislative Body of Local Agencies; Salaries, Salary Schedules or Fringe Benefits; Mandatory Subjects**

(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. Closed Sessions; Statement of Reasons and Legal Authority; Scope of Coverage; Notice**

(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. Closed Sessions; Legislative Body Of Multijurisdictional Law Enforcement Agency**

(a) For purposes of this section, “multijurisdictional law enforcement agency” means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional 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.

**§ 54957.9. Authorization to Clear Room Where Meeting Willfully Interrupted, Etc.**

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.

**§ 54957.10. Closed Sessions; Employee Application for Early Withdrawal of Funds in Deferred Compensation Plan; Financial Hardship**

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

**§ 54958. Application of Chapter**

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

**§ 54959. Criminal Penalty**

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.

**§ 54960. Actions to Stop or Prevent Violations or Determine Applicability of Chapter**

(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 ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, 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 audio 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 audio record its closed sessions and preserve the audio 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 audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording 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 that 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 that has custody and control of the audio 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 that has custody and control of the recording.

(ii) An affidavit that 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) This section shall not permit discovery of communications that are protected by the attorney-client privilege.

**§ 54960.1. Unlawful Action by Legislative Body; Action for Mandamus or Injunction; Prerequisites**

(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, 54956, or 54956.5 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, 54956, or 54956.5. 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, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(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, 54956, or 54956.5 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.

### **§ 54960.2. Requirements for Filing of Actions; Cease and Desist**

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action



pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

To:

*The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:*

*[Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]*

*In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.*

*The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.*

*Very truly yours,*

*[Chairperson or acting chairperson of the legislative body]*

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the

district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

**§ 54960.5. Costs and Attorney Fees**

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. 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. Meetings Places; Discriminatory Admission Policies; Accessibility**

(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 ancestry or any characteristic listed or defined in Section 11135, 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. Closed Session by Legislative Body Prohibited**

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, 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.

**§ 54963. Closed Sessions: Confidential Information**

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, “confidential information” means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

# ABOUT US

The hallmark of Best Best & Krieger's success is rooted in the relationships we forge with our clients. Grounded in integrity, respect and a shared commitment to excellence, these relationships create a sense of unity, and assure that we are fulfilling our role as trusted advisor and advocate.

BB&K is a limited liability partnership that has been in business for more than 125 years. We are a full-service law firm with over 200 attorneys in 10 offices throughout California and one in Washington, D.C. We deliver effective, timely and service-oriented solutions to complex legal issues facing public agencies, businesses and individuals across the U.S. and internationally.

## Public Agencies and Private Businesses

Our large public agency practice means that we work in the public interest and on many of the most challenging issues our society faces today. A nationally recognized leader in Municipal and Environmental law, we efficiently, intelligently and meaningfully assist our public agency clients with complex, multi-disciplinary issues and provide creative solutions. This includes ARC: Advanced Records Center – a full-service, scalable and responsive resource utilizing experienced legal personnel and leading-edge technology to supplement in-house resources for records-related matters. We successfully maneuver our public agency clients through legal complexities and governmental mandates.

At the same time, we are able to offer businesses of all sizes, structures and industries a range of services that rival the mega firms. We have helped businesses achieve their goals for more than a century with proactive, strategic and cost-effective counsel and representation that enables clients to focus on their businesses and plan for their future. We also bring a unique perspective and insight on the public agencies that businesses must routinely interact with.

## Government Relations

Our experienced advocates in California and at the national level help our clients navigate the ever-changing regulatory, policy and legislative challenges they face. We give our clients a voice where it matters to help influence policy and secure the much-needed and scarce funding that allows progress to happen.

We offer the depth and breadth of experience to seamlessly integrate our legal and advocacy services with our clients' day-to-day operations. We handle a broad range of issues and provide the access and responsiveness our clients need – and deserve. Communication, collaboration and creativity strengthen our work product, and we utilize technological innovations to nurture our relationships. We believe our diversity (which has earned top marks from national industry publications) leads to more effective problem-solving for our clients. Our integrated approach ensures the highest quality and most timely representation available.

BB&K is governed by a five-member Executive Committee, chaired by Managing Partner Eric Garner, and elected by the partners. Additional firm leadership includes practice group leaders, office managing partners and a professional management team.

# LOCATIONS

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