



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE: Review of Brown Act Requirements Related to Closed Session Meetings

RECOMMENDED MOTION: Receive and File City Attorney's summary of Brown Act requirements related to Closed Session Meetings.

SUMMARY

The purpose of this memorandum is to outline the provisions of the Brown Act, California Government Code Section 54950, *et seq.* as they relate to closed session meetings.

DISCUSSION

Background

The Brown Act exemplifies the strong public policy in the State of California in favor of open meetings. Private discussions among a majority of council members are prohibited unless authorized under the Brown Act. Accordingly, without specific authority in the Brown Act for a closed session meeting, a matter must be discussed in public. In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interest of an employee.

Reasons for Meeting in Closed Session

Closed session meetings must be noticed on the posted agenda and must include the section of the Brown Act authorizing the closed session. The four most common grounds for a City Council to meet in closed session are as follows:

1. Real Estate Negotiations (Gov. Code section 54956.8). The City Council may meet in closed session to discuss the purchase, sale, exchange or lease of real property. The purpose of this closed session is to grant authority to the negotiator on price and terms of payment. The City's negotiator may be a member of the legislative body. After real estate negotiations are concluded, the

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approval of the agreement and the substance of the agreement must be reported. If the City's own approval makes the agreement final, the City must report the action in open session. If final approval lies with another party, the City must report the approval as soon as it is informed of it, upon the inquiry of any person.

2. Pending Litigation (Gov. Code section 54956.9). The Brown Act expressly authorizes closed session meetings to discuss pending litigation. The purpose of the pending litigation exception is to allow the City Council to confer with, or receive advice from, its legal counsel. "Pending litigations" includes three types of matters:

- Existing litigation – this includes any type of adjudicatory action against the City;
- Threatened or anticipated litigation – this arises when the specific facts and circumstances suggest that the City has a significant exposure to litigation; or
- Potential litigation – this arises when the City seeks legal advice on whether to protect the City's rights and interest by initiating litigation.

3. Personnel (Gov. Code section 54957). A closed session meeting may be held "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." The purpose of the "personnel" exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow for a full discussion by the Council. This exception is limited to discussing individuals, not general personnel policies. Additionally, elected and appointed officials of a city are not "employees." The personnel exception also prohibits salary discussions (other than a disciplinary reduction).

4. Labor Negotiations (Gov. Code section 54957.6). The Brown Act allows closed session meetings for labor negotiations. The City Council may meet in closed session to instruct its bargaining representatives on employee salaries and benefits for both union and non-union employees.

Reportable Actions following a Closed Session Meeting

The City Council's closed session direction or "vote" is not subject to public disclosure except for "reportable actions" as set forth in Government Code Section 54957.1. Section 54957.1, subdivision (a) defines reportable actions as (1) "an agreement concluding real estate negotiations ... after the agreement is final," (2) decision related to seeking appellate review, (3) settlement of pending litigation after the settlement is final, (4) disposition as to claims, (5) certain

personnel actions, (6) labor negotiations after the labor agreement is final, and (7) certain pension fund transactions.

Confidentiality of Closed Session Discussions

Discussions, deliberations, and information distributed in connection with a closed session permitted by the Brown Act are strictly confidential and may not be disclosed unless authorized by the legislative body. (Gov. Code section 54963; 76 Ops.Cal.Atty.Gen. 289, 290 & 291 (1993); 80 Ops.Cal.Atty.Gen. 231, 239 (1997).) 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" pursuant to the Brown Act. (Gov. Code section 54963(b).)

Government Code Section 54963 provides that "[a] person may not disclose confidential information that has been acquired by being present in closed session ... unless the legislative body authorizes disclosure of that confidential information." Accordingly, documents, notes, deliberations, and any related information related to a closed session permitted by the Brown Act are strictly confidential and may not be disclosed unless authorized by the legislative body. (Gov. Code section 54963; 76 Ops.Cal.Atty.Gen. 289, 290 & 291 (1993); 80 Ops.Cal.Atty.Gen. 231, 239 (1997).)

Relationship between the Brown Act and the Public Records Act

The Public Records Act specifically recognizes that certain records may be kept confidential and therefore not subject to disclosure. Government Code section 6254 provides that "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law . . ." are exempt from the Public Records Act disclosure requirements. Additionally, documents and notes that reflect the deliberative process contributing to an executive and/or collegial decision made in closed session may be withheld to protect that process. (See Gov. Code section 6255; see also, Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325.)

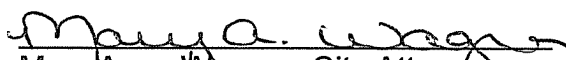
FISCAL IMPACT

None.

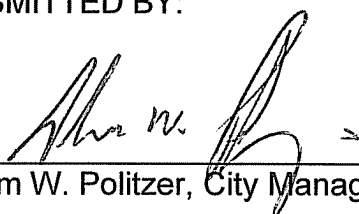
STAFF RECOMMENDATIONS

It is recommended that the City Council receive and file the City Attorney's summary regarding the Brown Act requirements related to Closed Session Meetings.

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