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CITY OF SACRAMENTO

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December 16, 1986

Law & Legislation Committee  
Sacramento, California

Re: Implementation of AB 2674 (Connelly)  
Relating to Amendments to the Brown Act

Dear Committee Members:

Assembly Bill 2674 (Connelly), which amends the Brown Act, will go into effect on January 1, 1987. In general, this new law applies to meetings of the City Council and other City Boards and Commissions which are subject to the Brown Act. A list of the Boards and Commissions affected by the new law is attached for your information (attachment 1). We also attach a copy of the most important sections of AB 2674 (attachment 2).

The law requires local agencies to post an agenda prior to each meeting. It also requires that members of the public be provided an opportunity to address the local body. It generally prohibits the body from acting on items not appearing on the agenda. It authorizes the bringing of suit to void certain actions taken in violation of the Act.

We are advising the staff personnel who deal with other City Boards and Commissions of these changes in the Brown Act. We will also prepare the changes in the City Council Rules which are necessary to make them consistent with the new Brown Act provisions.

We summarize the principal provisions of the Bill in greater detail as follows:

1. Requires that the agenda of the meeting be posted in a location "freely accessible to members of the public" 72 hours in advance of the meeting.

COMMENT:

The general thinking on this requirement by the sponsors of the legislation, the League of California Cities and others, is that this posting should be in a location where members of the public may view it from outside a building. The Council agenda, for example, would need to be posted on Saturday evening. If it is posted inside a building which is closed weekends, it is not "freely accessible" to the public for about 36 hours. This is half the time required for posting. Therefore, it is recommended that an enclosed bulletin board or some other method be devised to permit viewing of the agendas outside a building. One suggestion is that the front door of the City Hall contain a short notice advising members of the public that the full agendas are available for viewing on the side of or at the rear of the City Hall. The Planning Commission could place their agendas on the windows at the building at 13th & I. The person posting the agendas should also keep a written log of the time of posting.

2. Requires that the agenda contain a brief general description of each item of business to be transacted or discussed at the meeting.

COMMENT:

Special care must be taken to ensure, to the extent possible, that the general description of the item is accurate. Council members should make every effort to list on the agenda those items which they intend to bring up at the Council meeting under "Ideas and Questions by Members of the Council."

3. Provides that no action shall be taken on any item not on the posted agenda, except action is permitted under any of the following circumstances:

- (a) The body determines by a majority vote that an emergency situation exists as defined. The Code Section defines emergency situations as work stoppage, crippling disaster or other activity which severely impairs public health and/or safety.
- (b) The body determines by a 2/3rds vote or by a unanimous vote of those present if less than 2/3rds are present, that the need to take action on a matter occurred after the agenda was posted.

- (c) The body may take action on an item posted on an agenda for a meeting occurring not more than five days before, when at that prior meeting the item was continued to the date at which action is being taken.

COMMENT:

Generally, only subsection (b) will apply to Council or City Board and Commission meetings. A person requesting the exemption to act on the item not on the agenda will have to state the reasons why the need to act arose after the agenda was posted. I suggest that a form such as that attached (attachment 3) be used to present to the Council and other boards for consideration items not included on the posted agenda.

The statute is unclear as to whether the Council may discuss an item which is not on the posted agenda and which does not qualify for discussion under the exceptions. The language in the statute provides that the agenda must include a description of each item of business "to be transacted or discussed." The section then states that "no action" shall be taken on any item not appearing on the agenda. It does not explicitly extend this prohibition to the discussion of such items. I recognize that it may be difficult to avoid responding to a member of the public who brings up an item which is not listed on the agenda nor covered by one of the exceptions. I am taking the position that such an item or an item brought up by Council members or staff may be discussed as long as no action is taken.

4. Directs that the agenda for regular meetings provide an opportunity for the public to directly address the legislative body on items of interest to the public which are within the subject matter jurisdiction of the body. Expressly provides that no action shall be taken on any item raised by a member of the public not appearing on the agenda unless it qualifies for exception under the law. Allows the agency to adopt reasonable regulations to limit the total amount of time allocated for public testimony on particular issues and for each individual speaker.

COMMENT:

The League of California Cities recommends that cities interpret this provision broadly to provide an opportunity for the public to speak on all items within the subject matter jurisdiction of the

Council, including listed agenda items. It recommends that the opportunity to speak occur prior to Council action on an item. There are at least two ways by which this requirement can be met. One is to place language on the agenda similar to that adopted by the County Board of Supervisors (attachment 4). Another way is to provide an opportunity for the public to speak at a fixed time on the agenda early in the meeting and to receive public comment at that time both on agenda items and other matters. If this approach is taken, the Council could decline to permit public comment at other times during the meeting, except as required for public hearings. The Committee should decide which approach it wishes to follow.

With regard to the adoption of reasonable rules limiting the time of speakers, we have prepared a resolution (attachment 5) which would be applicable to all Boards and Commissions of the City unless modified by such Board or Commission. This resolution provides that members of the public are limited to five minutes per person and not to exceed fifteen minutes on a particular subject. There is also the requirement that the issue be within the subject matter jurisdiction of the Board or Commission and that if the individual is speaking to a specific agenda item, that the comments be relevant to that item. The resolution also authorizes subjects raised by citizens or others addressing the Council or board on matters not on the agenda to be referred to staff by the Mayor.

5. Provides any interested party the right to commence an action to declare null and void the action taken by a body in violation of the provisions of the Brown Act after giving the body an opportunity to cure the defect. The procedure and time limit for making this demand and correcting the challenged action are set forth in the new law.

COMMENT:

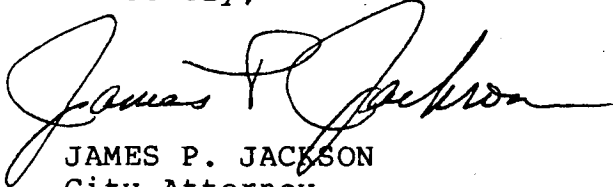
In four situations, the action taken is not to be declared null and void. These instances are:

1. Where the action was taken "in substantial compliance" with the Brown Act.
2. Where the action taken was in connection with a sale or issuance of notes, bonds or other indebtedness.
3. Where the action taken gave rise to a contractual obligation upon which a party has in good faith detrimentally relied; and

4. Where the action was taken in connection with the collection of any tax.

The act awards court costs and reasonable attorneys fees to the plaintiff in an action where the public entity is found to have violated the Brown Act. The public entity can only recover attorneys fees if the court finds that the action by the plaintiff was "clearly frivolous and totally lacking in merit."

Sincerely,



JAMES P. JACKSON  
City Attorney

JPJ:rmm

Attachments

It is recommended that the Law and Legislation Committee recommend to the City Council:

1. Adopt the form in Attachment 3 as the form to be used for items not included on the posted agenda.

2. Council members be urged to list items on the posted agenda which they intend to bring up under "Ideas and Questions by Members of the Council".

3. Add the language in Attachment 4 to the Council Agenda.

4. Adopt the Resolution set forth in Attachment 5.

5. Instruct the staff to prepare the appropriate amendments to the Council rules to make them consistent with AB 2674.

BOARDS, COMMISSIONS AND COMMITTEESCITY COUNCIL APPOINTMENTS

<u>NAME OF BOARD</u>	<u>NAME &amp; ADDRESS OF CONTACT</u>	<u>MEETING LOCATION</u>
Administration, Investment & Fiscal Management Board (R)	Employee Services 801-9th St., Rm. 100	801-9th Street Room 103
Affirmative Action Advisory Committee (S)	Gary Little 801-9th St. Rm. 100	
Ann Land/Bertha Henschel Memorial Fund Commission (R)	City Manager's Office City Hall, Rm. 100	City Hall Council Chambers
Board of Plumbing Examiners (S)	Ron Pecci 1231 I St., Rm. 200	
Capitol Area Development Authority Governing Bd. (R)	Ronald G. Rule 1230 N St., Ste. 200 Sacramento 95814	City Hall Council Chambers
Citizens Advisory Committee Parks & Community Svcs (S)	David Mori 1231 I St., Rm. 400	
City/County Homeless Task Force (S)	Stephen Whitney-Wise SHRA, 630 I Street	
City/County Solid Waste Advisory Committee (R)	Bruce Barboza 1231 I St., Rm. 103	700 H St., Supv. Chambers
Sacramento City Public Facilities Financing Corp. Board of Directors (S)	City Clerk 915 I St., Rm. 203	
City Planning Commission (R)	Suzanne Glimstad 1231 I St., Rm. 300	1231 I St.
Civil Service Board (R)	Dept. of Personnel 801-9th St., Rm. 201	801-9th St. Conference Rm.
Construction Codes Advisory & 202 & Appeals Board (R)	Bldg. Inspections Div. 1231 I St., Rm. 200	1231 I St., Rm.
Del Paso Heights Project Area Committee (R) Blvd	Charles Holmes, SHRA 630 I Street	Hagginwood C.C. 3721 Marysville
Design Review and Preservation Board (R)	City Planning Division 1230 I St., Rm. 300	1230 I Street

<u>NAME OF BOARD</u>	<u>NAME &amp; ADDRESS OF CONTACT</u>	<u>MEETING LOCATION</u>
Governing Board of Sacramento Community Center Auth. (R)	City Clerk 915 I St., Rm. 203	Community Center
Housing Code Advisory and 102 Appeals Board (R)	Sharon Copley 1231 I St., Rm. 200	1231 I St., Rm.
Human Rights/Fair Housing Commission (R)	Robbin Randolph, Exec. Dir. 2131 Capitol Ave. St. 206	915 I St. Council Chambers
Joint City/County Accommodations for Phy. Handi. Persons Appeal Board (S)	Bldg. Inspections 1231 I St., Room 200	
Mosquito Abatement District (R)	Sac.-Yolo Mosquito Abatement 1650 Silica Ave. Sacramento 95815	1650 Silica Ave.
Museum & History Commission (R)	Museum & History Div. 1930 J St.	City Hall Council Chambers
Noise Control Board (S)	Harry Sen, Co. Environ. Health 3701 Branch Center Road Sacramento 95827	
Paratransit, Inc. Board of Directors (R)	Yvonne Haynes 3000 T St., Ste. 101 Sacramento, CA 95691	1400-29th St. Sacramento
Retirement Hearing Commission (R)	Employee Services 801-9th St., Rm. 100	801-9th St. Conference Rm.
River Park Citizen's Advisory Committee on Landfill Exp. (S)	Solid Waste Div.	
Sacramento History Center (S)	Museum & History Div.	
Sacramento Metropolitan Arts Commission (R)	Metro Arts Div. 800-10th St., Ste. 2	630 I Street Conference Room
Regional Transit Board (R)	Regional Transit P.O. Box 2110 Sacramento, 95810	1400-29th St.
Sacramento Relocation Appeals Board (S)	SHRA 630 I Street	
Sacramento/Yolo Port District Commission (R)	June Gentry World Trade Center Port of Sacramento	World Trade Cntr Board Room



West Sacramento, CA 95691

NAME OF BOARD

NAME & ADDRESS OF CONTACT

MEETING LOCATION

South Natomas Capital Improvement Adv. Committee (R)	Dept. of Finance City Hall, Rm. 112	
So. Sacramento Community Plan Update Advisory Comm. (S)	Price Walker Planning Division	
Street Tree Task Force (S)	Don Eckels, Parks	
Toxic Substances Commission (R)	John Boss, Solid Waste	

BOARDS/COMMISSIONS WHICH CITY COUNCIL MEMBERS SERVE

Crocker Art Museum (R) Gallery	Crocker Art Museum 216 O Street Sacramento, CA 95814	Crocker Art Conference Room
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## AMMENDMENT TO THE BROWN ACT (AB2674)

— SEC. 5. Section 54954.2 is added to the Government Code, to read:

54954.2. (a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action shall be taken on any item not appearing on the posted 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 following conditions:

(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 legislative body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that the need to take action arose 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.

— SEC. 6. Section 54954.3 is added to the Government Code, to read:

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on items of interest to the public that are 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 54951.2. However, in the case of a meeting of a city council in a city or a board of supervisors in a city and county, the agenda need not provide an opportunity for members of the public to address the council or board on any item that has already been considered by a committee, composed exclusively of members of the council or board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, unless the item has been substantially changed since the committee heard the item, as determined by the council or board.

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

— SEC. 8. Section 54956.5 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

— SEC. 9. Section 54960.1 is added to the Government Code, to read:

54960.1. (a) 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, or 54956 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the 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, or 54956. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation. The written demand shall be made within 30 days from the date the action was taken. 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. 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. Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, the expiration of the 30-day period to cure or correct, or 75 days from the date the challenged action was taken, 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.

(c) An action taken 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, and 54956.

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

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid, upon which a party has, in good faith, detrimentally relied.

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

(d) 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, or 54956 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(e) 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.

— SEC. 10. Section 54960.5 of the Government Code is amended to read:

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

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

JUSTIFICATION FOR THE NECESSITY FOR THE CITY COUNCIL  
TO TAKE ACTION ON A MATTER NOT ON THE POSTED AGENDA

Date: \_\_\_\_\_

TO: CITY COUNCIL

FROM: \_\_\_\_\_

MEETING DATE REQUESTED: \_\_\_\_\_

TITLE OF ITEM: \_\_\_\_\_

REASON ITEM IS NOT ON POSTED AGENDA: \_\_\_\_\_

STATEMENT OF REASON FOR EMERGENCY\* OR WHY NEED FOR ACTION AROSE  
AFTER THE AGENDA WAS POSTED: \_\_\_\_\_

\*Gov. Code Sec. 54956.5 defines "emergency situation" as:

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

\_\_\_\_\_  
Signature of Requestor

**LANGUAGE WHICH MAY BE ADDED  
TO EACH COUNCIL AGENDA**

While the City Council welcomes and encourages participation in the Council meetings, it would be appreciated if you would limit your comments to three minutes so that everyone may be heard. Public testimony will be permitted on each agenda item as it is called. Matters under the jurisdiction of the Council, and not on the posted agenda, may be addressed by the general public following completion of the regular agenda and any off-agenda matters before the Council for consideration. The Council limits testimony on matters not on the agenda to three minutes per person and not more than fifteen minutes for a particular subject.

## RESOLUTION NO.

Adopted by The Sacramento City Council on date of

### RESOLUTION RELATING TO PUBLIC PARTICIPATION IN MEETINGS OF THE CITY COUNCIL AND OTHER CITY BOARDS AND COMMISSIONS

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

1. That this Resolution, adopted pursuant to Government Code Section 54954.3(b), shall apply to the City Council, and to the City Boards and Commissions listed in Paragraph 6, only if such Boards and Commissions do not now have regulations relating to public testimony at meetings or do not hereafter adopt such regulations.

2. Testimony by members of the public on items on the posted agenda for the meeting, and items not on the posted agenda, may be limited to three minutes per person and a total of fifteen minutes per item.

3. In addition, the Council or City Board or Commission may also require that the public testimony be within the subject matter jurisdiction of the Council or City Board or Commission, and that, if the member of the public is speaking to a specific agenda item, the comments be relevant to that item.

4. That if a public hearing is required to be held under federal, state or local law, then any restrictions on public testimony at such hearings must be in compliance with the laws relating to such public hearings.

5. Subjects or matters not on the posted agenda which are raised by members of the public, or others, including members of the Council or City Boards or Commissions, may be referred by the presiding officer to the City staff or other appropriate persons.



6. Where the words "City Boards and Commissions" are used in this Resolution, it shall mean the public bodies named on the attached list.

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MAYOR

ATTEST:

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CITY CLERK

BOARDS, COMMISSIONS AND COMMITTEES

Administrative, Investment &  
Fiscal Management Board

Affirmative Action Advisory  
Committee

Ann Land/Bertha Henschel  
Memorial Fund Commission

Board of Plumbing Examiners

Citizens Advisory Committee  
Parks & Community Services

Sacramento City Public  
Facilities financing Corp.  
Board of Directors

City Planning Commission

Civil Service Board

Construction Codes Advisory &  
202  
& Appeals Board

Design Review and Preservation  
Board

Governing Board of Sacramento  
Community Center Auth.

Housing Code Advisory and  
102  
Appeals Board

Joint City/County Accommodations  
for Physically Handicapped persons  
Appeal Board

Museum & History Commission

Retirement Hearing Commission

River Park Citizen's Advisory  
Committee on Landfill Exp.

Sacramento Metropolitan Arts  
Commission

Sacramento Relocation  
Appeals Board

South Natomas Capital  
Improvement Adv. Committee

So. Sacramento Community  
Plan Update Advisory Comm.

Street Tree Task Force

Toxic Substances Commission

Crocker Art Museum  
Co-Trustees