

POLICY TITLE: CLOSED SESSIONS

POLICY STATEMENT:

The Brown Act at Government Code Section 54957 authorizes closed sessions for specifically enumerated topics including labor negotiations, litigation, property negotiations and personnel matters. In generally explaining the closed session exceptions to the Brown Act's general "open meeting" rule, the California Supreme Court has acknowledged that "the public need for access to information must be balanced against the public's right to the efficient administration of public bodies." *Regents of University of California v. Superior Court*, 20 Cal.4th 509, 526 (1999). Thus, "[m]ost sunshine laws explicitly recognize that "the administrative process cannot be conducted entirely in the public eye.'" In the Court's words: "The ringing rhetoric of the open meeting acts jibes poorly with political reality. Taken to its logical extreme, openness may actually diminish the number and quality of public exchanges, increase divisiveness, and limit the flow of relevant information and the depth of critical collective scrutiny." *Id.* at 544.

Section 54963(a), adopted by the State legislature in 2002, prohibits a person from disclosing "confidential information that has been acquired by being present in a closed session authorized by [the Brown Act] to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information." The Brown Act defines "confidential information" in this context as "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." §54963(a).

The Act permits addressing violations of the rule against disclosure of confidential information "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." §54963.

CLOSED SESSION REQUIREMENTS:

1. Closed sessions items shall be agendaized and publicly reported upon in accordance with all the applicable provisions of the Brown Act.
2. If staff or Councilmembers wish to discuss a matter in a closed session, they should notify the City Attorney's office as soon as possible, but preferably no later than 96 hours (4 days) before the scheduled closed session.

3. If feasible, the City Attorney will prepare a confidential memo to the Council prior to the closed session setting forth the information required by the Brown Act.

4. Amicus Curiae items will be placed on both closed and open sessions with discussion in closed session and formal action in open session, as determined by the City Attorney.

5. No City Councilmember, City official or City employee shall disclose any information provided or discussed in closed session or any direction given in closed session unless directed or permitted to do so by a majority of the City Councilmembers present at the closed session. Upon election to the City Council, a Councilmember shall in writing acknowledge that she or he understands this provision of state law and City Council policy and agrees to comply.

AUTHORIZATION: Council Policy Manual Update of November 17, 1998
Revised by motion: October 23, 2007