



A Tradition of Stewardship
A Commitment to Service

Closed Session Training



Napa County
Office of County Counsel
January 10, 2023



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Closed Session

What is closed session?

- Exception to the open meeting requirements of the Brown Act
- Balances public's right to information vs. need to efficiently conduct Agency business
- Only when allowed by state law

Gov't Code § 54962



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General Requirements:

- agenda notice with description
- oral announcement beforehand
- public comment beforehand
- report out afterwards (sometimes)

Gov't Code §§ 54954.5, 54957.1, 54957.7;
Galbiso v. Orosi Public Utility Dist., 167 Cal. App. 4th 1063 (2008)



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Conference with real property negotiators

- Must involve purchase, sale, exchange or lease of real property
- May only discuss price and terms of payment

Gov't Code § 54956.8



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Price and terms of payment includes:

- Form, manner, and timing of payment
- How high/low to start offers
- Sequencing/strategy of offers and counteroffers
- Payment alternatives
- \$ for comparable properties

Op. Atty. Gen. 10-206 (Dec. 27, 2011)



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Price and terms of payment does not include discussion of:

- Environmental impacts
- Naming rights
- Design work
- Related infrastructure needs
- Impact on homelessness



Shapiro v. San Diego City Council, 96 Cal. App. 4th 904 (2002)



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Pending Litigation

- Existing litigation
- Significant exposure to litigation
- Initiation of litigation
- Agency attorney (in-house or outside) must attend
- Opposing party/counsel cannot attend

Gov't Code § 54956.9;

Page v. MiraCosta Community College Dist., 180 Cal. App. 4th 471 (2009)



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Existing Litigation

- Typically filed court cases
- Includes administrative hearings, arbitration
- Must name the case in the agenda

Gov't Code § 54956.9



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Significant Exposure to Litigation

- Must be based on “existing facts and circumstances”
- May meet to determine whether there is significant exposure to litigation.

Gov’t Code § 54956.9



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Existing Facts and Circumstances

- Facts not yet known to plaintiffs which could result in litigation against the agency
 - Need not identify in agenda
- Accident, disaster, incident, or transaction known to plaintiffs which could result in litigation against the agency
 - Must identify in agenda

Gov't Code § 54956.9



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Mt. Soledad Landslide, San Diego, CA



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Existing Facts and Circumstances

- Gov't Code claims
 - Must be available for public inspection
- Statement at public meeting threatening litigation
- Statement to agency threatening litigation
 - Must make record of statement and make available for public inspection

Gov't Code § 54956.9;
Fowler v. City of Lafayette, 45 Cal. App. 5th 360 (2020)



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Threat to Public Services or Facilities

- Security of public buildings
- Security of essential public services
 - Water
 - Sewer
 - Gas
 - Electricity
- Must include security or law enforcement personnel

Gov't Code § 54957(a)



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Public Employment (personnel exception)

- Appointment
- Employment
- Evaluation of performance
- Discipline
- Dismissal
- Hear complaints or charges against employee

Gov't Code § 54957(b)



Closed Sessions

Evaluation of employment may include discussion of:

- Both general and specific instances of performance
- Criteria and process for conducting the evaluation
- Whether or not job performance is satisfactory
- Goals for future improvement (feedback)

Duval v. Board of Trustees, 93 Cal. App. 4th 902 (2001)



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Closed Sessions

Hear complaints or charges against employee

- Examination of witnesses / taking evidence
- Must give employee written notice at least 24 hours in advance
- Employee may direct hearing be held in open session

Gov't Code § 54957(b)



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Public Employment (personnel exception)

- Does not include review/action of elected officials or members of a legislative body
- Cannot discuss or take action on compensation, except for reduction in pay as discipline

Gov't Code § 54957(b)(4)



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Conference with Labor Negotiators

- To instruct bargaining representatives on employee salaries and fringe benefits
- Both represented and unrepresented employees
- May discuss available funds and funding priorities, in the context of instructing bargaining representatives

Gov't Code § 54957.6



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Other closed sessions

- To determine whether a license applicant with a criminal record is “sufficiently rehabilitated”
- Case review/planning of multijurisdictional law enforcement agencies (JPAs)
- Pension fund transactions
- To review draft report from Bureau of State Audits
- More

Gov’t Code §§ 54956.7, 54956.81, 54956.86, 54956.75



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Closed Sessions

Who may attend?

- Members of legislative body
- Agency attorney
- Staff and consultants necessary for consideration of the matter (official or essential role)

Op. Atty. Gen. 98-1011 (Mar. 4, 1999); Op. Atty. Gen. 21-1102 (May 26, 2022)



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Confidentiality of Closed Session

- May not disclose confidential information acquired in closed session
- Cannot share confidential information with staff who were not permitted to attend closed session

Gov't Code § 54963; Op. Atty. Gen. 21-1102 (May 26, 2022)



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Closed Sessions

Remedies for violations of confidentiality

- Injunctive relief
- Disciplinary action against employee (if employee has training or notice of confidentiality requirements)
- Referral of member of legislative body to the grand jury

Gov't Code § 54963(c)



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Exceptions to confidentiality

- Confidential inquiry or complaint to District Attorney or grand jury of a perceived violation of confidentiality
- Expressing an opinion re the legality of action taken in closed session
- Information is not confidential
- Legislative body waives confidentiality

Gov't Code § 54963(e)



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Questions?

