Please file and scan the attached supporting documents in Council File 12-1326 and Council File: 14-0682.

1. Council File: 12-1326; Title: Ralph M. Brown Act / Provisions of the Brown Act / Administrative Code Ordinance

2. Council File: 14-0682; Title: Michael Hunt v. City of Los Angeles, et al.

1 of 100 DOCUMENTS

MATTHEW DOWD; PETER DEMIAN; EDWARD LA GROSSA; ANTHONY BROWN; NATHAN PINO, WILLIE LEE TURNER; DAVID "ZUMA DOGG" SALTSBURG; THOMAS BURRUM JNR; MARVIN SIMS; JESSE BROWN; LOUIE GARCIA; RENE CASTRO, Plaintiff, v. CITY OF LOS ANGELES, a municipal corporation, Defendants.

Case No. CV 09-06731 DDP (SSx)

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

2013 U.S. Dist. LEXIS 111435

August 7, 2013, Decided
August 7, 2013, Filed

COUNSEL: [*1] For Matthew Dowd, an individual, Peter Demian, an individual, Edward LaGrossa, an individual, Anthony Brown, an individual, Nathan Pino, an individual, Willie Lee Turner, an individual, David Saltsburg, an individual also known as Zuma Dogg, Louie Garcia, an individual, Rene Castro, an individual, Plaintiffs: Stephen F Rohde, Rohde and Victoroff, Los Angeles, CA.

For City of Los Angeles, a municipal corporation, Defendant: Laurie Rittenberg, LEAD ATTORNEY, Los Angeles City Attorney's Office, Los Angeles, CA; David W Skinner, Dawn A McIntosh, Deborah J Fox, Margaret W Rosequist, Meyers Nave Riback Silver and Wilson, Los Angeles, CA.

JUDGES: DEAN D. PREGERSON, United States District Judge.

OPINION BY: DEAN D. PREGERSON

OPINION

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' AND DEFENDANT'S CROSS MOTIONS FOR SUMMARY JUDGMENT

[Dkt. Nos. 158 & 168]

Presently before the court are Plaintiffs' and Defendant's Cross Motions for Summary Judgment. Having considered the parties' submissions, heard oral argument, and ordered supplemental briefing, the court adopts the following order.

I. BACKGROUND

A. Factual History

The Venice Beach Boardwalk (the "Boardwalk") is a major tourist attraction in the City of Los Angeles. LAMC § 42.15(A)(1)(a). [*2] It is "historically significant as a traditional public forum for its performance and visual artists, as well as other free speech activity." Id. During the summer and on weekends, the Boardwalk is filled with street performers, including "instrumental musicians, singers, jugglers, acrobats, mimes, comics, magicians, prophets, fortune tellers, and other assorted entertainers." City of Los Angeles Dep't of Recreation & Parks, http://www.laparks.org/venice/venice.htm (last visited Nov. 8, 2009). Plaintiffs are thirteen street performers and artists who make their living on the Venice Beach Boardwalk by, among other things, dancing, singing, painting, unicycling, playing music, as well as selling or accepting donations for items related to their performances, such as CDs, works of art, and T-shirts.

Over the years, the defendant the City of Los Angeles (the "City"), has adopted and amended a number of versions of Los Angeles Municipal Code ("LAMC") § 42.15, in order to address its concern that unregulated vending negatively effects the character, safety, and

economic vitality of the Venice Beach Boardwalk and in response to litigation. In 2005, the City suspended the 2004 version of § 42.15, [*3] in response to the legal challenge raised in Venice Food Not Bombs v. City of Los Angeles, No. CV 05-04998 DDP (SS) (CD. Cal. 2005), and later adopted an amended version of the ordinance as part of a settlement agreement in 2006. The settlement agreement was the culmination of intensive meetings and negotiations between the parties and community stakeholders, with the aid of the Court, in an effort to draft an ordinance that would address the City's concerns about unregulated vending while protecting the rights of those who engage in activities protected by the *First Amendment* on Venice Boardwalk.

The City's adoption of the 2006 version of § 42.15 did not end all controversy concerning the vending ordinance and further litigation ensued. On January 14, 2009, this Court ruled in *Hunt v. City of Los Angeles, 601 F. Supp. 2d 1158, 1170-72 (C.D. Cal. 2009)*, that the 2004 version of LAMC § 42.15(C) was unconstitutionally vague, because the exception to the vending ban for "merchandise constituting, carrying or making a religious political, philosophical, or ideological message or statement which is inextricably intertwined with merchandise," presented "a real risk of arbitrary and discriminatory [*4] enforcement because it fail[ed] to provide sufficient guidance to those who would enforce it." The Court did not reach the merits of the plaintiffs' facial void-for-vagueness challenge to a similar provision in the 2006 version of the ordinance, finding that the plaintiffs lacked standing to raise the claim. *Hunt, 601 F. Supp. 2d at 1175.*

In the face of such litigation, the City again amended § 42.15, with the latest draft taking effect on May 19, 2008. In enacting the 2008 version of LAMC § 42.15, the City found that (1) tourists are deterred from visiting the Boardwalk because they are harassed by unregulated vendors, (2) the limited amount of space on the Boardwalk should be assigned in order to avoid frequent altercations, (3) vendors and their equipment impede the ingress and egress of emergency and public safety vehicles, and (4) unregulated vending creates excessive and annoying noise on the Boardwalk that negatively affects nearby workers, visitors, and residents. LAMC § 42.15(A)(1)(b)(i)-(vii). In response to these findings, LAMC § 42.15 (2008) provides that "[e]xcept as specifically allowed in this section, no person shall engage in vending" along the Venice Beach Boardwalk. [*5] Id. § 42.15(A).

The 2008 version of the ordinance divides much of the available space in the heart of the Boardwalk into individual spaces designated as P-Zone spaces and I-Zone spaces. Id. § 42.15(2). In the P-Zone spaces, "persons can perform, engage in traditional expressive speech, and petitioning activities, and vend the following expressive items: newspapers, leaflets, pamphlets, bumper stickers, patches, buttons, or books created by the vendor or recordings of the vendor's own performances . . . ." Id. § 42.15(2)(a). In the I-Zone spaces, "persons may engage in activities permissible in the P-Zone, and also engage in vending of expressive items created by the vendor, or the vending of expressive items that are inextricably intertwined with the vendor's message . . . ." Id. § 42.15(2)(b).

With certain limited exceptions, anyone wishing to use a P-Zone or I-Zone space during Peak Season must apply for an annual permit and enter into a lottery system by which spaces are assigned each day. Program Rules at pp. 2-3. The person to whom the space is assigned has priority to use the space. But, after 12:00 p.m., anyone (with or without a permit) may use any unoccupied space, so long as [*6] she engages only in activities approved for the P-Zones and relinquishes the space to the permit-holder if she returns.

Outside of the P- and I-Zones, anyone may engage in any activity permitted in the P-Zones and vend expressive items "inextricably intertwined with the vendor's message," so long as she does not "set up a display table, easel, stand, equipment, or other furniture, use a pushcart or other vehicle . . . ." Id. § 42.15(D)(1)(a). On the West side of the Boardwalk, outside of the P- and I-Zones, anyone can engage in any permitted P-Zone activity as long as it is "not vending and does not substantially impede or obstruct pedestrian or vehicular traffic, subject to reasonable size and height restrictions on any table, easel, or other furniture . . . ." Id. § 42.15(D)(1)(b).

The ordinance and Program Rules also include noise regulations. LAMC § 42.15(F)(1) provides that noise levels must not exceed seventy-five decibels when measured at a distance of twenty-five feet away or ninety-six decibels when measured from one foot away between nine o'clock in the morning and sunset. Furthermore, LAMC § 42.15(F)(4) bans the use of amplified sound anywhere on the Boardwalk except in specially [*7] designated P-Zone spaces between 17th Avenue and Horizon Avenue and between Breeze Avenue and Park Avenue. The Program Rules clarify that amplified sound "is permitted only in the designated spaces in the P-Zones in the locations specified in Section 42.15 between 9:00 a.m. and sunset, and is prohibited after sunset and before 9:00 a.m." Program Rules at p. 4.

Following the City's adoption of the 2008 version of § 42.15, the Ninth Circuit decided *Berger v. City of Seattle, 569 F.3d 1029 (9th Cir. 2009)* (en banc), holding that a designated-performance-space and permitting system established by the City of Seattle for the Seattle Center was facially unconstitutional under the *First Amendment*.

In so holding, the court noted that the Supreme Court "has repeatedly concluded that single-speaker permitting requirements are not a constitutionally valid means of advancing [the government's] interests because, typically (1) they sweep too broadly, (2) they only marginally advance the government's asserted interests, and (3) the government's interests can be achieved by less intrusive means." *Id. at 1038* (internal citations omitted). While acknowledging that such Supreme Court decisions involved [*8] permitting requirements for door-to-door solicitation, the court held that "it stands to reason that such [single-speaker permitting] requirements would be at least as constitutionally suspect when applied to speech in a public park, where a speaker's *First Amendment* protections reach their zenith, than when applied to speech on a citizen's doorstep where substantial privacy interests exist." *Id. at 1039*. As a result, the court stated that it was "not surprising that we and almost every other circuit to have considered the issue have refused to uphold registration requirements that apply to individual speakers or small groups in a public forum." Id.

Shortly after the Ninth Circuit published its decision in *Berger, 569 F.3d 1029*, Plaintiffs filed this lawsuit raising facial and as-applied challenges to the 2006 and 2008 versions of LAMC §42.15 and its implementing Public Expression Permit Program Rules ("Program Rules") (revised April 2, 2008), arguing that they violate the *First* and *Fourteenth Amendments*. The facial challenges to the 2008 ordinance at issue here appear to be threefold: First, Plaintiffs argue that the permitting and designated performance space system is not a reasonable [*9] time, place and manner restriction and grants unbridled discretion to licensing authorities. Second, Plaintiffs assert that the ordinance's use of the phrase "inextricably intertwined" renders it unconstitutionally vague. Third, Plaintiffs claim that the amplified sound ban is not a reasonable time, place, and manner restriction.

In order to voice their concerns over the ordinance and its enforcement, Plaintiffs Dowd and Saltsburg began attending Los Angeles City Council meetings and speaking during public comment sessions. Plaintiffs Dowd and Saltsburg raise facial and as-applied challenges to the City Council's Rules of Decorum.

B. Procedural History

On October 8, 2009, the City filed a motion to dismiss the facial challenges to LAMC § 42.15 (2008) on the grounds that the ordinance is constitutional on its face. The court denied the motion to dismiss with respect Plaintiffs' facial challenge to the permitting system and the amplified sound ban, and granted it with respect to Plaintiffs' facial challenge to the vending ban, holding that they did not have standing to pursue such a claim. On October 16, 2009, Plaintiffs filed a motion for preliminary injunction. The court granted the injunction [*10] as to the amplified sound ban and the permitting and lottery system, and denied it as to the rules of decorum, the limitation of boardwalk activities at sunset, the height prohibition, and the rotation requirement.

The parties have now filed cross-motions for summary judgment on the constitutionality of the 2008 Ordinance, the amplified sound ban, the limitation of boardwalk activities after sunset, the height limitation, and the rules of decorum.

II. LEGAL STANDARD

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(a)*. A party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and of identifying those portions of the pleadings and discovery responses that demonstrate the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*. All reasonable inferences from the evidence must be drawn in favor of the nonmoving party. See *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. [*11] If the moving party does not bear the burden of proof at trial, it is entitled to summary judgment if it can demonstrate that "there is an absence of evidence to support the nonmoving party's case." *Celotex, 477 U.S. at 325*.

Once the moving party meets its burden, the burden shifts to the nonmoving party opposing the motion, who must "set forth specific facts showing that there is a genuine issue for trial." *Anderson, 477 U.S. at 256*. Summary judgment is warranted if a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex, 477 U.S. at 322*. A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Anderson, 477 U.S. at 248*. There is no genuine issue of fact "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*.

It is not the court's task "to scour the record in search [*12] of a genuine issue of triable fact." *Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996)*. Counsel has an ob-

ligation to lay out their support clearly. *Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001)*. The court "need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set forth in the opposing papers with adequate references so that it could conveniently be found." Id.

III. DISCUSSION

A. 2006 Ordinance

The statute of limitations for suits under *42 U.S.C. § 1983* is governed by state law applying to tort actions for the recovery of damages for personal injuries. *Silva v. Crain, 169 F.3d 608, 610 (9th Cir. 1999)*. In California, the statute of limitations for such personal injuries is two years. *Cal. Civ. Proc. Code § 335.1*. "Generally, the statute of limitations begins to run when a potential plaintiff knows or has reason to know of the asserted injury." *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd., 509 F.3d 1020, 1026-27 (9th Cir. 2007)*, quoting *De Anza Properties X, Ltd. v. County of Santa Cruz, 936 F.2d 1084, 1086 (9th Cir. 1991)*. For facial challenges, the two year statute of limitations [*13] runs from the date that the challenged statute or ordinance went into effect, regardless of when a plaintiff learns of the enactment. *Action Apartment Ass'n, Inc., 509 F.3d at 1027 (9th Cir. 2007)*(internal citation and quotation marks omitted) ("Given the general rule that the statute of limitations begins to run when a potential plaintiff knows or has reason to know of the asserted injury, it stands to reason that any facial injury to any right should be apparent upon passage and enactment of a statute.")

The 2006 Ordinance became effective on March 25, 2006. (City Mot., Exh. 301.) Plaintiffs filed this action on September 16, 2009. Thus, their facial challenge to the 2006 Ordinance was filed more than a year after the statute of limitations period had expired and such a challenge is time-barred.

The as-applied claims are likewise time-barred. Any acts that took place prior to September 16, 2007, and that give rise to an as-applied challenge would be time-barred. Because the 2006 Ordinance was suspended in July 2007 (FAC ¶ 50), any act of enforcement of the 2006 Ordinance would have taken place prior to July 2007, and would necessarily be time barred.

For these reasons, the court GRANTS [*14] summary judgment in favor of Defendant on all claims relating to the 2006 ordinance.

B. Permit and Lottery System

"A permitting requirement is a prior restraint on speech and therefore bears a 'heavy presumption' against its constitutionality." *Berger, 569 F.3d at 1037* (internal citation omitted). "The presumptive invalidity and offensiveness" of such systems "stem from the significant burden they place on free speech. Both the procedural hurdle of filling out and submitting a written application, and the temporal hurdle of waiting for the permit to be granted may discourage potential speakers." *Id. at 1037-38* (internal citation and quotation marks omitted). Even where the government has a significant interest, the Supreme Court has concluded that "single-speaker permitting requirements are not a constitutionally valid means of advancing those interests because, typically, (1) they sweep too broadly . . . (2) they only marginally advance the government's asserted interests, . . . and (3) the government's interests can be achieved by less intrusive means." *Id. at 1038*. "Although the Supreme Court has not addressed the validity of single-speaker permitting requirements for speech in a [*15] public forum, it stands to reason that such requirements would be at least as constitutionally suspect when applied to speech in a public park, where a speaker's *First Amendment* protections reach their zenith." *Id. at 1039*. The "venerable tradition of the park as public forum has . . . a very practical side to it as well: parks provide a free forum for those who cannot afford newspaper advertisements, television infomercials, or billboards." *Grossman v. City of Portland, 33 F.3d 1200, 1205 (9th Cir. 1994)*.

Nonetheless, "local governments can exercise their substantial interest in regulating competing uses of traditional public fora by imposing permitting requirements for certain uses." *Santa Monica Food Not Bombs v. Santa Monica, 450 F.3d 1022, 1038 (9th Cir. 2006)*. A local government may issue reasonable regulations governing the time, place, or manner of speech. *Berger, 569 F.3d at 1036*. "To be upheld as a constitutional time, place or manner restriction, a permit requirement applying to *First Amendment* [*16] activity in a public park must (1) be content neutral, (2) be narrowly tailored to serve a significant government interest, and (3) leave open ample alternative channels of expression." *Grossman, 33 F.3d at 1205*. "When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Ent'm't Grp., Inc., 529 U.S. 803, 804, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000)*. See also *Berger, 569 F.3d at 1048*; *Kuba v. 1-A Agr. Ass'n, 387 F.3d 850, 858-63 (9th Cir. 2004)*.

This court granted a preliminary injunction with respect to the permit and lottery system, finding that in light of the Ninth Circuit's decision in *Berger v. City of Seattle, 569 F.3d 1029 (2009)*, "the permit requirement is likely to violate the *First Amendment*." (2010 Order at 26.) Berger concerned a permitting system employed by the 80-acre Seattle Civic Center which, among other

things, required street performers to obtain permits before performing anywhere at the Center and to wear a badge while performing, and limited street performances to sixteen designated locations. *Id. at 1035*. The court in Berger rejected the argument that the permitting system promoted the government's interests [*17] in deterring wrongful conduct by threatening the loss of a permit and by identifying rulebreakers so as to notify them of alleged violations. *Id. at 1044*. The court held that such goals could be accomplished just as effectively by requiring a person observed violating the rules to identify herself and an after-the-fact penalty, such as the loss of the right to perform or a fine. *Id. at 1043*.

The Berger court did not strike down the sixteen designated performance locations, noting that "the delineation of performance areas, particularly in the most sought-after locales, might pass constitutional muster on a more developed factual record." *Id. at 1045*. The court held that the City submitted undisputed evidence that before the location restriction, there were weekly complaints from park tenant about street performers blocking entranceways and egresses, and the location rule did promote the City's interest in reducing these problems. *Id. at 1049*. It found an issue of fact as to whether the location restriction left "ample alternative channels for communication." Id.

The permitting and lottery system in this case differs in several respects from the system struck down in *Berger*. First, street [*18] performers may still perform anywhere else on the Boardwalk, although they are limited in terms of what items they can use (i.e., they cannot use pushcarts or tables elsewhere). Second, the lottery system assigns spaces to a particular person (or large performance group) for a particular day. However, after 12:00 p.m. each day any person, with or without a permit, may use an unoccupied P-Zone space and any person with an I-Zone permit may use an unoccupied I-Zone space, so long as she relinquishes the space should the lottery winner return. Third, insofar as an applicant seeks an I-Zone permit, she is required to disclose (1) her name and mailing address, (2) a description of the goods or merchandise for which she seeks a permit, and (3) a declaration that the goods or merchandise are expressive items inextricably intertwined with the applicant's message.

This court determined that the permitting and lottery system was likely unconstitutional because "[t]here is no explanation as to why this system manages conflicting claims to limited space any more effectively than a simple first-come-first-served rule." (2010 Order at 26.) The court now considers whether the City has met its burden [*19] of showing that the permit system is narrowly tailored to promote its interest.

1. Content-Neutrality

"A regulation is content-based if either the underlying purpose of the regulation is to suppress particular ideas or, if the regulation, by its very terms, singles out particular content for differential treatment." *Reed v. Town of Gilbert, AZ, 587 F.3d 966, 974 (9th Cir. 2009)*(quoting *Berger, 569 F.3d at 1051*).

Plaintiffs argue that the Ordinance is content-based because in the P-Zone spaces, persons can perform, engage in traditional expressive speech, and petition, but can vend only certain expressive items: "newspapers, leaflets, pamphlets, bumper stickers, patches, buttons, or books created by the vendor or recordings of the vendor's own performances." LAMC § 42.15(2)(a). In the I-Zone spaces "persons may engage in activities permissible in the P-Zone, and also engage in vending of expressive items created by the vendor, or the vending of expressive items that are inextricably intertwined with the vendor's message." Id. § 41.15(2)(b). Plaintiffs argue that these require an officer to examine the content of the speech in order to determine whether it is permissible, because an officer [*20] must consider what matter qualifies as "newspaper," "leaflet" or "pamphlet"; whether an item has been "created, written or composed by the vendor"; whether an item is "inherently communicative"; whether an item has "nominal utility apart from its communication"; and other aspects of the speech. (Dowd Mot. at 13-14.)

Plaintiffs argue that such determinations are content-based by analogy to *Forsyth County v. Nationalist Movement, 505 U.S. 123, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992)*. There, the county of Forsyth, Georgia, passed an ordinance that allowed the county to adjust the fee for demonstration permit "in order to meet the expense incident to the administration of the Ordinance and to the maintenance of public order in the matter licensed." *Id. at 127*. The Court determined that the ordinance was content based because "the fee assessed will depend on the administrator's measure of the amount of hostility likely to be created by the speech based on its content. Those wishing to express views unpopular with bottle throwers, for example, may have to pay more for their permit." *Id. at 134*.

Here, none of the characteristics an officer must consider is based in the subject matter of the message. Determining whether a piece [*21] of literature is a "pamphlet" or a t-shirt, for instance, involves a consideration of form rather than content; the message conveyed is immaterial. While an officer must discern whether an object is inherently communicative, the inquiry is only whether the object is inherently communicating any message, not whether the object is communicating a message on a specific topic. Unlike *Foti v. City of Menlo*

Park, 146 F.3d 629, 633-34, where a city prohibited the posting of signs on public property with the exception of signs containing certain content (real estate open houses, safety and traffic notices, etc.), here the Ordinance does not target or privilege any particular message. Thus the Ordinance is not content based in the traditional sense of privileging or discriminating against certain topics. While it is by no means obvious whether certain objects are inherently communicative, even the close cases would depend not on the topic of the message but on the nature of the object.

The court finds that the 2008 Ordinance is not content based.

2. Narrow Tailoring

The City has met its burden in demonstrating that the 2008 Ordinance responds to a significant government interest. The 2008 Ordinance [*22] contains the following findings:

> The amount of space on the Boardwalk that is available for performing and visual artists and for political advocacy is limited due to the size of the Boardwalk and the large crowds of visitors that the Boardwalk attracts. Due to the limited amount of space, unregulated vending along the Boardwalk prevents many persons from engaging in performance, art, advocacy or other expressive activities. Prior to the City's Board of Recreation and Parks Commission establishing a program for assignment of spaces, unregulated vending resulted in conflicting claims for the available space. There were numerous altercations over the locations and amounts of space that any one person or organization could use. Frequently, the altercations became violent, requiring law enforcement response to preserve the public peace. Persons wishing to secure spaces often arrived prior to dawn and created loud noises in setting up their displays, thereby disturbing the public peace and requiring a law enforcement response. Unregulated, the Boardwalk became a place where only the strongest and earliest arrivals could secure space to exercise their rights of free expression without threat [*23] of intimidation. It is, therefore, necessary to regulate the use of the limited space on the Boardwalk to prevent conflicting claims for the space and to allocate the limited space available fairly to all who desire to use it for lawful purposes.

LAMC (2008) § 42.15(A)(1)(b)(ii). The court accepts these findings as evidence of a significant government interest. "As a general matter, courts should not be in the business of second-guessing fact-bound empirical assessments of city planners." *City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425, 451, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002)*(J. Kennedy concurring). See also *Alameda Books, Inc. v. City of Los Angeles, 631 F.3d 1031, 1042-43 (9th Cir. 2011)*. Plaintiffs have presented no evidence creating an issue of fact in this respect.

The City must also present evidence that the Ordinance was narrowly tailored to advance this interest. On its face, the Ordinance was crafted to remedy the problems identified in the findings. Unlike the ordinance in *Berger*, the 2008 Ordinance was a space allocation system which assigned performers to particular spots to effectively distribute the limited space of the Boardwalk. The permits combined with the lottery system provided a mechanism [*24] for officers to resolve disputes about space allocation in a neutral manner. The lottery system was also designed to discourage pre-dawn arrival at the Boardwalk in order to secure a space, and to expand the pool of potential performers to include speakers who might not assert themselves in a first-come-first-serve situation. The ordinance thus appears to be carefully crafted to resolve the problems identified in the findings. "[T]he regulation responds precisely to the substantive problems which legitimately concern the Government." *Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 297, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984)*(internal citations and quotation marks omitted).

The City presents some evidence that the permit system managed space more effectively than the first-come-first-serve system. The City cites a declaration from Victor Jauregui, Senior Recreation Director II within the City of Los Angeles Department of Recreation and Parks, stating that "[t]he space allocation system with the lottery eliminated many of the prior disturbances and problems over spaces. It also allowed those who could not arrive at the crack of dawn or who were not the most aggressive to have a chance to be assigned a space at [*25] the Boardwalk." (Jauregui Decl. ¶ 8.) Jauregui also stated that with space assignment through the permit and lottery, "City staff had a neutral way to determine who was entitled to the space by looking at the lottery results." (Id. ¶ 9.)

Plaintiffs present evidence that a performer who did not obtain a permit through the lottery would not have a permit for a seven days or had to wait until 12:00 p.m. to

obtain a space. (Dowd Decl. ¶ 10.) Performers did not always obtain spots. (See e.g. LaGrossa Decl. ¶ 10, stating that he obtained spots 60% of the time.) Plaintiff Demian asserts that his income was reduced because he could not use his amplifier in all spots and did not always get a spot where amplification was permitted. (Demian Decl. ¶ 33.)

Plaintiffs also present declarations to the effect that the Ordinance increased tensions among them. See e.g. Demian Decl. ¶ 14 ("Because of us being cramped together like that [in the large performance spaces], there would be a lot of anger sometimes"), LaGrossa Decl. ¶ 9 ("[T]hey put us like crabs in a barrel, and so naturally there's going to be fights."), Brown Decl. ¶ 11, noting that there were still disputes with the permit system, but now [*26] they are between "people trying to get spaces to sell things."). [1]

> 1 The City objects to these statements as opinion rather than fact and therefore inappropriate for declarations. (City's Objections to Plaintiffs' Declarations.) See *Fed. R. Civ. P. 56(c)* ("An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.") and *L.R. 7-7* ("Declarations shall contain only factual, evidentiary matter and shall conform as far as possible to the requirements of *F.R.Civ.P. 56(c)(4)*.") The court finds that the declarations are based on the performers' first-hand knowledge of the interactions among performers on the Boardwalk and is therefore admissible.

Plaintiffs' evidence shows that there was some tension on the Boardwalk among performers, but this does not create an issue of fact as to whether altercations decreased; as the City points out, there could be fewer altercations and noise disturbances alongside some tensions and altercations among performers. In addition, the City is not required to achieve its substantial interest [*27] with the least speech-restrictive alternative. *Clark, 468 U.S. at 299*. Plaintiffs' evidence is not persuasive in demonstrating that the Ordinance was speech restrictive; it shows instead that Plaintiffs had objections to certain aspects of the Ordinance. That does not necessarily amount to a restriction on speech.

3. Alternative Channels of Expression

As the court pointed out in its 2010 Order, another important difference between this Ordinance and the one in *Berger* is that in Berger, the park required a permit for performers who wished to perform anywhere in the park. Here, the permit is required only for those performers who wish to set up their equipment and remain in a one-mile stretch of the Boardwalk. Performers are free to express themselves without using a table or other equipment within that one-mile area. They may occupy spaces that are not occupied after noon each day, provided they relinquish the space if the person to whom it was assigned appears. Additionally, they may set themselves up on the Boardwalk outside that one-mile area without obtaining a permit. [2]

> 2 In itself, the fact that performers could set up tables for speech outside the one-mile area would not provide [*28] a sufficient alternative channel of communication. Although one mile is a limited slice of the Boardwalk, it is nonetheless a significant area, especially for a person who wished to express a message to as broad an audience as possible.

The Ordinance thus provides alternative channels of expression.

4. Vagueness challenge

The court previously found that Plaintiffs do not have standing to challenge the vending ban as void for vagueness because of its exception for expressive items that are 'inextricably intertwined' with the speaker's message. (2010 Order at 11.) The court found that "Plaintiffs engage in activities that do not fall within the ambit of the anti-vending regulations, as they are street performers who engage in traditional expressive speech, vend expressive items they have created, and sell recordings of their own performances. In fact, none of the Plaintiffs claims to have been chilled from performing or vending any items based on the anti-vending regulations." (2010 Order at 11-12.) The court therefore dismissed Plaintiffs' facial void-for-vagueness challenge to the vending ban and its exception for expressive items "inextricably intertwined" with the speaker's message. [*29] Id. at 13. The court nonetheless indicated that "insofar as the Plaintiffs argue that the permitting scheme grants unbridled discretion to licensing officials because of its incorporation of the 'inextricably intertwined' standard, that claim survives the City's motion to dismiss." (Id. at 13 n.2.)

Plaintiffs assert that "[o]n the more fully developed record, Plaintiffs have standing to challenge the vending ban as void for vagueness. Plaintiffs engage in activities that fall within the ambit of the anti-vending regulations despite the fact that they are also street performers who engage in traditional expressive speech. Plaintiffs do claim to have been chilled from performing or vending any items based on the police harassment and enforcement of the anti-vending regulations." (Dowd Mot. at 24.) They also assert that they are challenging the

vagueness of other terms in § 42.15, including "inherently communicative," "nominal utility apart from its communication," "some expressive purpose," and "dominant" non-expressive purpose. (Id.)

Despite these assertions, Plaintiffs fail to distinguish these claims from the claims dismissed by this court in the 2010 Order or to point to those portions [*30] of the "more fully developed record" that purportedly give them standing to challenge the vending ban despite the previous dismissal of this claim. Noting that "Plaintiffs' Declarations amply demonstrate a 'serious interest in subjecting themselves to' the challenged measure, and that the City is 'seriously intent on enforcing the challenged measure' against them" without pointing to factual evidence in the record is insufficient to establish a genuine issue of material fact. (Dowd Reply at 4.) Nor is it sufficient for Plaintiffs to state that "[g]iven the limitations of space, all of those facts [in the Statement of Uncontroverted Facts and Conclusions of Law] cannot be repeated here and the Court is encouraged to review the Declarations and the Statement in detail." (Dowd Mot. at 2.) It is not the court's task "to scour the record in search of a genuine issue of triable fact." *Keenan v. Allan, 91 F.3d 1275, 1278 (9th Cir. 1996)*. Counsel has an obligation to lay out the support clearly. *Carmen v. San Francisco Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001)*. The court "need not examine the entire file for evidence establishing a genuine issue of fact, where the evidence is not set [*31] forth in the opposition papers with adequate references so that it could conveniently be found." Id.

The court finds that Plaintiffs' vagueness challenge was previously dismissed and that Plaintiffs have failed to present evidence sufficient to cause the court to take up the issue again.

C. Amplified Sound Ban

The use of a sound amplification device is protected by the *First Amendment. Saia v. New York, 334 U.S. 558, 561, 68 S. Ct. 1148, 92 L. Ed. 1574 (1948)*. As discussed above, "the City has the burden of justifying the restriction on speech." *Klein v. City of San Clemente, 584 F.3d 1196, 1201 (9th Cir. 2009)*. In order for a regulation of amplified sound to comport with the *First Amendment*, it must (1) be "'justified without reference to the content of the regulated speech,'" (2) be "'narrowly tailored to serve a significant government interest,'" and (3) "'leave open ample alternative channels for communication of the information.'" *Ward v. Rock Against Racism, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)* (quoting *Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984))*.

LAMC § 42.15(F)(4) and the Program Rules ban the use of amplified sound anywhere on the Boardwalk except in specially designated P-Zone spaces between 17th [*32] Avenue and Horizon Avenue and between Breeze Avenue and Park Avenue. (2008 Ordinance, §§ 42.15(D)(2)(c) and (F).) Fifty-six out of the 105 P-Zone spaces were in the area in which amplified sound was permitted. The ordinance also allowed the City to issue special events permits for amplified sound. (2008 Ordinance, § 42.15(F)(6).)

The City now asserts that the amplified sound ban is intended not only to protect residential areas from excess noise, but also to balance the expressive needs of various Boardwalk users. (2008 Ord. 42.15(A)(1)(b). It points out that there are other noise regulations applicable to the Boardwalk as a whole and that the 2008 Ordinance addressed the use of amplified sound as "one of numerous issues involving vendors and performances" on the western side of the Boardwalk. (City Reply at 21.)

The court finds that although the city has an interest in balancing the expressive needs of various Boardwalk users and in regulating the noise levels on the Boardwalk, this ordinance is not narrowly tailored because it targets only one aspect of the problem, namely, the sound emanating from the west side of the Boardwalk. It does not address sound emanating from the east side [*33] or from visitors.

The amplified sound ban thus places the burden of achieving the government's purpose upon one group. "[A]lthough the chosen restriction need not be the least restrictive or least intrusive means available to achieve the government's legitimate interests, the existence of obvious, less burdensome alternatives is a relevant consideration in determining whether the 'fit' between ends and means is reasonable." *Berger v. City of Seattle, 569 F.3d at 1041*. Performers in the eight most northern blocks of the Boardwalk are banned from using any amplification. This ban intrudes on those performers' attempts to make themselves heard. See e.g. Demian Decl. ¶ 9 (stating that the amplified sound ban made it too difficult to perform acoustically because it is impossible to "project" enough to be heard). The obvious less restrictive alternative to the absolute amplified sound ban is a decibel limit that would apply to all users of the Boardwalk, on both sides. The Boardwalk already has a decibel limit of 75bDA at 25 feet and 96 dBA at one foot. LAMC § 42.15(F). If the overall sound level is the problem the Ordinance is meant to address, the obvious less restrictive alternative is [*34] for the City to decrease the maximum decibel limit on both sides of the Boardwalk, rather than barring all amplification by performers on the west side.

The court finds that the amplified sound ban is not narrowly tailored and therefore facially unconstitutional. The court GRANTS summary judgment in favor of Plaintiffs on this issue.

3. Height Limitation

The 2008 Ordinance includes a height restriction: "No person shall place or allow any item (except an umbrella or other sun shade) exceeding four feet above ground in any designated space . . . ." (Section 42.15 (2008) G(2)(b). See also Program Rules, Public Expression Program Regulations, p.6.) Although regulating equipment, this section of the Ordinance arguably constrains communicative conduct and therefore is subject to a challenge under the *First Amendment. Vlasak v. Superior Court of California ex rel. County of Los Angeles, 329 F.3d 683, 687 (9th Cir. 2003)*. Again, the City bears the burden of demonstrating that the Ordinance "advances a substantial governmental interest and that it is narrowly tailored to prevent no more than the exact source of the 'evil' it seeks to remedy." *Edwards v. City of Coeur d'Alene, 262 F.3d 856, 863 (9th Cir. 2001)*(quoting [*35] *Frisby v. Schultz, 487 U.S. 474, 485, 108 S. Ct. 2495, 101 L. Ed. 2d 420 (1988))*.

The 2008 Ordinance includes the following findings:

> (iv) The vendors and their equipment may impede the ingress and egress of emergency and public safety vehicles by creating physical obstacles to emergency response and administration of aid to those in need of immediate medical attention and to victims of criminal activity. It is therefore necessary to regulate vendors and their use of equipment to avoid interference with emergency response vehicles that provide assistance to individuals with medical needs and victims of criminal activity.
>
> ...
>
> (vi) Unregulated vending causes visual clutter/blight along the Boardwalk, impedes the views of the beach and the Pacific Ocean, and threatens the City's ability to attract tourists and preserve businesses along the Boardwalk. It is therefore necessary to regulate the number of vendors, the size of their equipment, and displays, and the location of vending activity.

Sec. 42.15 A.1.(b).

As discussed above, the City has the burden to demonstrate that the Ordinance is narrowly tailored to promote a significant interest. The City presents evidence that it has a substantial interest, as stated in the Ordinance's [*36] findings, in facilitating emergency access and reducing visual clutter. See *Honolulu Weekly, Inc. v. Harris, 298 F.3d 1037, 1045 (9th Cir. 2002)* ("both the Supreme Court and this Court have found that aesthetics can be a substantial governmental interest."); *Members of City Council of City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 805, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984)*("It is well settled that the state may legitimately exercise its police powers to advance esthetic values.").

Plaintiffs argue that the height restriction is not narrowly tailored to achieve those interests because it imposes a significant burden on performers, who often use microphone stands, musical instruments, and other props such as ladders, which are higher than four feet. They also argue that it is irrational insofar as it makes an exception for umbrellas.

In Vlasak, cited by the City, the Ninth Circuit upheld Los Angeles Municipal Code section § 55.07, which prohibits the "carrying or possession of certain 'demonstration equipment'-rectangular wooden pieces more than 1/4 inch thick and 2 inches wide, or non-rectangular pieces thicker than 3/4 inch." *Vlasak, 329 F.3d at 686*. The court found that, unlike a broad ban on all signs [*37] attached to wooden or plastic handles, this ordinance was "narrowly tailored to meet the substantial interest in public safety," that "[t]he dimension restrictions . . . . are not substantially broader than necessary to achieve the government interest," and that the ordinance did not "deprive[] demonstrators of alternative means of communication." *Id. at 690*. The court found that the ordinance was narrowly tailored because it advanced the public safety interest by limiting the size of handles that could be used as weapons while still allowing demonstrators to communicate their message in the form they chose (placards).

Here, the City does not explain why a four feet restriction, as opposed to a three feet or a six feet restriction, advances its interest. Nonetheless, "particularly where conduct and not merely speech is involved, . . . the over-breadth of a statute must not only be real, but substantial as well, judged in relation to its plainly legitimate sweep." *Broadrick v. Oklahoma, 413 U.S. 601, 615, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973)*. Here, the regulation, while limiting some speech, is not substantially overbroad; Plaintiffs have some limitations on their performances - they cannot use microphones of a certain [*38] height, and performers accustomed to performing from ladders are unable to do so - but the limitations leave ample channels of communication while advancing

the City's interests. The limitations placed on Plaintiffs' performances are not so substantial as to lead the court to micromanage the City's regulation of public safety and aesthetics.

The court GRANTS summary judgment in favor of Defendants on this issue.

4. Rotation Requirement

The 2008 Ordinance allocates 5 of the 105 spaces in the P-Zone to large act/performance groups that draw an audience of 25 or more persons on average. (2008 Program Rules at 2.) The Program Rules state:

> the space(s) may be rotated once every hour beginning at 11:00 a.m., if more than one performer or group wants the same space. Example: if two group/performers want space D, they would alternate performances on an hourly basis beginning at 11:00 a.m.

Id. at 6.

The 2008 Ordinance includes findings, discussed above, that the Boardwalk is a limited space, and that altercations took place to obtain available space. LAMC Section 42.15 (1)(b)(ii). To accommodate groups that would attract large numbers of people, the Ordinance set aside a certain number of spaces [*39] into which performers could rotate. Plaintiffs point to a litany of problems [3] with the rotation requirement, including the fact that there is no cap on the number of performers who can be in the rotation; the ordinance privileges "popular" speech attracting 30 or more people over less popular speech; performers must predict how large their audience will be; police have too much discretion to determine whether the act attracted a large enough audience; and it is vague, leading to arbitrary enforcement by the police.

> 3 Plaintiffs do not cite to any evidence in their papers. Once again, it is not the court's task "to scour the record in search of a genuine issue of triable fact." *Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996).*

The court finds that Plaintiffs have not created an issue of fact as to the narrow tailoring of the rotation requirement. As discussed with respect to the height requirement, the court finds that the rotation requirement does not burden substantially more speech than necessary.

The court GRANTS summary judgment to Defendants on this issue.

5. Sunset Requirement

The Program Rules restrict all activity in designated spaces to the period between 9 a.m. and sunset. [*40] (2008 Program Rules at 6.) The City has presented evidence that the purpose of the requirement is to "ensure [the Boardwalk] is clean and safe for the crowds of people that will visit the following day." (Decl. Jauregui ¶ 10.) Plaintiffs allege that this is not a reasonable time, place, and manner restriction because sunset times change each day, the marine layer prevents visual observation of the sunset, tourists leave the park after - but not before - sunset, and other parks close one hour after sunset. (FAC ¶ 43.) Plaintiffs assert that it would be more reasonable for the park to close one hour after sunset. (Id.) It is not clear how these allegations, unsupported by evidence, amount to evidence that the requirement burdens more significantly speech than necessary and is not narrowly tailored. [4] The court finds that there is no issue of fact and GRANTS summary judgment in favor of the City.

> 4 Again, Plaintiffs do not refer in their papers to any evidence on this point in their moving papers or opposition. It appears that the evidence they have on this point is presented in response to the City's Uncontroverted Fact number 19, which states the purpose of this section of the Ordinance [*41] as being to make the Boardwalk clean and safe for the following day and to reduce noise in the adjacent residential neighborhoods. Plaintiffs present over four pages of purported evidence, but it is non-responsive, as it deals primarily with the continuing presence of conflicts among performers.

D. Rules of Decorum

Plaintiffs seek a declaratory judgment that certain of the Los Angeles City Council Rules of Decorum violate the *First Amendment* and *Article 1 § 2 of the California Constitution.* (Compl., Prayer for Relief, ¶¶ 2,3.) They also seek a declaratory judgment that "the challenged sections of the Council Rules are 'unconstitutional as-applied,' as well as an order expunging all violations and citations of those rules "in any and all files maintained by the City." (Id., Prayer for Relief, ¶¶ 4, 5.) They also seek a preliminary injunction against the Rules of Decorum. (Id., Prayer for Relief, ¶ 1.)

1. Facial Challenge

Under Ninth Circuit law, city council meetings, "once opened, have been regarded as public forums, albeit limited ones." *White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990).* "A council can regulate not only the time, place, and manner of speech in a limited

public [*42] forum, but also the content of speech -- as long as content-based regulations are viewpoint neutral and enforced that way." *Norse v. City of Santa Cruz, 629 F.3d 966, 975 (9th Cir. 2010)*. However, rules of decorum are constitutional if they "only permit[] a presiding officer to eject an attendee for actually disturbing or impeding a meeting." *Acosta v. City of Costa Mesa, 718 F.3d 800, 811 (2013)*(quoting *Norse, 629 F.3d at 976*).

In Norwalk, the Ninth Circuit considered a facial challenge to council rules nearly identical to those at issue in this case. The relevant portion of the rule was the following:

> Each person who addresses the Council shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting shall, at the discretion of the presiding officer or a majority of the Council, be barred from further audience before the Council during that meeting.

Norwalk, 900 F.2d at 1424. The Ninth Circuit did not [*43] consider the constitutionality of the rule on its face and held that because the rule was "readily susceptible" to be interpreted as requiring "that removal can only be ordered when someone making a proscribed remark is acting in a way that actually disturbs or impedes the meeting," it did not violate the *First Amendment*. Id.

Here, the Rule in question is similar to the rule in *Norwalk*: [5]

> Persons addressing the Council shall not make personal, impertinent, unduly repetitive, slanderous or profane remarks to the Council, any member of the Council, staff or general public, nor utter loud, threatening, personal or abusive language, nor engage in any other disorderly conduct that disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting.

(FAC ¶ 64; City Mot. Exh. 306, Rules of the Los Angeles City Council As Amended (July 2009), Ch. 1 Rule No. 12(a).)

5 The two are distinguishable in that the Norwalk rule uses "which" where the L.A. rule uses "that," a point which could be significant if a strict grammatical interpretation were performed. See notes 2 and 3 below.

There are at least three possible interpretations of the Rule. First, reading the sentence as three disjunctive [*44] clauses separated by "nor," it could be taken to state that certain kinds of speech are not allowed (personal, impertinent, repetitive, slanderous, threatening, etc.) and additionally that "disorderly conduct" that is disruptive is not allowed. Read this way, there is no "actual disruption" required for there to be a breach of the rule. A second interpretation is that the final clause ("that disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting") could be taken to modify all three sets of speech and behavior, [6] thus imposing an "actual disturbance" requirement on all types of speech and conduct listed. Third, the final clause -"nor engage in any other disorderly conduct that disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting" -could be taken to indicate that the first two types of speech or conduct (profanities, slander, abusive language, etc.) are a type of conduct that inherently "disrupts, disturbs, or otherwise impedes the meeting," and that other, similarly disruptive conduct is also prohibited. [7]

6 This is an ungrammatical reading of the Rule. "That" introduces "a clause defining or restricting the antecedent, and thus [*45] completing its sense." Oxford English Dictionary online, "that, pron.2." Sept. 2012. Oxford Univ. Press. <http://www.oed.com/view/Entry/200178?rskey=U6kljt&result=3&isAdvan ced=false>. (Nov. 29, 2012.) Here, as a grammatical matter it is clear that "that" is restricting the meaning of "disorderly conduct," not of the clauses preceding the sentence's final "nor." Nonetheless, given the widespread confusion concerning the use of "that" and "which," the court will not base a determination of whether the rule is "readily susceptible" to a certain interpretation on that interpretation's grammatical precision.

7 As discussed below, the video evidence suggests that City Council members interpret the rule in this way.

Only the second construction, which imposes an actual disruption requirement on all prohibited speech, allows the Rule to survive constitutional scrutiny because is otherwise viewpoint discrimination. As Plaintiffs point out, by their nature, "personal, impertinent and slanderous remarks will be critical. No one could be deemed

impertinent while praising the City Council." (Plaintiff's Mot. at 32.) "The council members should [know] that the government may never suppress viewpoints [*46] it doesn't like." *Norse, 629 F.3d at 979* (Kozinski, J. concurring). Nonetheless, because the Ninth Circuit interpreted a similar statute and found that it resisted a facial challenge, the court here likewise holds that the Rule is constitutional insofar as it is interpreted by the Council as requiring an "actual disruption" separate from the bare violation of the Rule.

The court notes, however, that this is an uncomfortable result. Without the "actual disruption" requirement, the Rule would be unconstitutional viewpoint discrimination. *Acosta, 718 F.3d at 812* (holding that a city council rule of decorum prohibiting "any personal, impertinent, profane, insolent, or slanderous remarks" without requiring an actual disruption is unconstitutional). With the "actual disruption" requirement, any speech covered by the first two parts of the rule would also qualify under the broader (and more likely constitutional) final category of "disorderly conduct that disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting." The restrictions on personal, impertinent, and slanderous remarks therefore serve no purpose in the Rule; they are remnants of unconstitutional restrictions [*47] saved from invalidity only by the qualification of "actual disruption" that arguably applies to them. Those restrictions on speech are thus at best superfluous. At worst, they chill constitutionally protected political speech. The rule contains a list of prohibited (and unconstitutionally restrictive) types of speech that is then, much less explicitly, qualified by the actual disruption requirement and thereby rendered constitutional. Although the Rule may help the Council meetings run more smoothly, it verges on violating the core right of citizens to criticize their democratically elected officials. And, as discussed below, because of its phrasing, it is easy to apply the Rule in an unconstitutional manner.

Nonetheless, Ninth Circuit precedent compels upholding the Rule insofar as it is interpreted to include an "actual disruption" requirement. [8] For the reasons discussed above, this requirement must be applied scrupulously in order to avoid violating the *First Amendment*.

> 8 This said, the City would do well to consider revising the Rules of Decorum to make it clear that an actual disruption is required before a speaker can be ejected. As discussed below, the court finds, based on the [*48] video evidence, that the Rules of Decorum are unconstitutional as applied. Revising the Rules of Decorum to indicate that an actual disruption is required would provide clear guidance to the City Council to help it conduct its business within the bounds of the *First Amendment*.

2. As-applied Challenge

"Norwalk permits the City to eject anyone for violation of the City's rules--rules that were only held to be facially valid to the extent that they require a person actually to disturb a meeting before being ejected." *Norse v. City of Santa Cruz, 629 F.3d at 976*. The court now considers whether Plaintiffs Dowd and Saltsburg actually disturbed the City Council meeting prior to being ejected.

a. Actual Disruption Standard

The Ninth Circuit has not defined "actual disruption" with precision. Actual disruption need not resemble a breach of the peace or fighting words. *Norwalk, 900 F.2d at 1425*. "A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancices. The meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner." *Id. at 1426*.

Although the standard for disruption [*49] is relatively low, a disruption must in fact have occurred. "Actual disruption means actual disruption. It does not mean constructive disruption, technical disruption, virtual disruption, nunc pro tunc disruption, or imaginary disruption. The City cannot define disruption so as to include non-disruption to invoke the aid of Norwalk." *Norse, 629 F.3d at 976 (9th Cir. 2010)*. "The Supreme Court long ago explained that 'in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.'" *Id. at 979* (Kozinski, J. concurring.), quoting *Tinker v. De Moines Ind. Cmty. Sch. Dist., 393 U.S. 503, 508, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969)*.

In some cases, the line between actual and potential disruption is difficult to draw. In *Kindt v. Santa Monica Rent Control Bd., 67 F.3d 266 (9th Cir. 1995)*, the Ninth Circuit held that it was permissible to remove a man who had previously disrupted proceedings of the same meeting when his "cohort" and frequent partner in disruption made an obscene gesture "which threatened to start the disruption all over again." *Id. at 271*. However, in Norse, the Ninth Circuit held that there had not clearly been a disruption when a man "gave [*50] the Council a silent Nazi salute" and was then ejected and arrested, rejecting the City's definition of "disturbance" as "any violation of its decorum rules." *Norse, 629 F.3d at 976*.

At a minimum, the disturbance must be something more than the bare violation of a rule. In Acosta, the Ninth Circuit favorably considered two jury instructions

indicating that actual disruption is measured by an effect on the audience and that profanity without more is not an actual disruption. *718 F.3d at 810 n.5* ("Whether a given instance of alleged misconduct substantially impairs the effective conduct of a meeting depends on the actual impact of that conduct on the course of the meeting." . . . "A speaker may not be removed from a meeting solely because of the use of profanity unless the use of profanity actually disturbs or impedes the meeting.").

The power to determine when a disruption has occurred has been placed in the hands of the moderator. *Norwalk, 900 F.2d at 1426* ("The role of a moderator involves a great deal of discretion. Undoubtedly, abuses can occur, as when a moderator rules speech out of order simply because he disagrees with it, or because it employs words he does not like.") The disruption [*51] cannot be the reaction of a Councilmember who is attacked. *Norse, 629 F.3d at 979* (CJ. Kozinski concurring) ("Though defendants point to Norse's reaction to Councilman Fitzmaurice as the 'disruption' that warranted carting him off to jail, Norse's calm assertion of his constitutional rights was not the least bit disruptive. The *First Amendment* would be meaningless if Councilman Fitzmaurice's petty pique justified Norse's arrest and removal.")

b. As-applied Challenge

The Ninth Circuit has identified two types of as-applied challenges. The first "paradigmatic type" is "one that tests a statute's constitutionality in one particular fact situation while refusing to adjudicate the constitutionality of the law in other fact situations." *Hoye v. City of Oakland, 653 F.3d 835, 854 (9th Cir. 2011)*(citation and internal quotation marks omitted). The second type is "based on the idea that the law itself is neutral and constitutional in all fact situations, but that it has been enforced selectively in a viewpoint discriminatory way. Such a challenge . . . is dependent on the factual evidence provided as to how the statutory scheme has in fact operated vis-à-vis the plaintiffs." Id. (citation and [*52] internal quotation marks omitted).

Plaintiffs have not presented evidence of the second type of as-applied challenge. Deposition evidence of Council members or other types of policy evidence would be required for the court to extrapolate from the video, transcript, and declaration evidence and find that there is a policy, rather than isolated instances, of unconstitutional application.

The court therefore considers the specific instances in which Plaintiffs contend that the Rules of Decorum were unconstitutional as applied. [9]

9 The court requested supplemental briefing identifying these incidents.

c. Incidents

The first three incidents took place on March 4, 2008, August 13, 2008, and June 12, 2009, prior to the amendment of the Rules on July 29, 2009. (FAC ¶ 64.) Plaintiffs assert that their challenge applies to the Rules prior to their amendment and to the amended Rules. The FAC is ambiguous on this point. However, nowhere in their briefing do Plaintiffs present the pre-2009 Rules, which may or may not contain the same provisions Plaintiffs are challenging. The court therefore declines to consider the first three incidents.

Plaintiffs have identified approximately ten [10] additional incidents [*53] involving Plaintiffs David Saltsburg ("Zuma Dogg" or "Dogg") and Matt Dowd when they attended City Council meetings. (Joint Statements RE Incidents 4 - 13.) The court has reviewed the video recordings and transcripts of the incidents provided by the parties. The evidence often demonstrates significant tolerance of citizen speech on the part of the members of the City Council. Dowd and Dogg were frequent speakers at City Council meetings and were ejected from only a handful of them. However, the court finds that each identified incident involves an unconstitutional application of the Rules of Decorum. The fact that these incidents represented a fraction of Dowd and Dogg's appearances at City Council meetings does not mitigate the constitutional violations. Additionally, although the court does not have enough evidence to determine that the City has a policy of applying the Rules in an unconstitutional fashion, it appears from the video evidence that the City Council and the representative of the City Attorney do not always require a disruption beyond the breach of the Rules of Decorum. Additionally, they appear to interpret the use of profanity as an actual disruption per se.

10 Incidents [*54] 8 and 9 appear to be substantially overlapping.

For instance, in Incident No. 4., on Sept. 2, 2009, Plaintiff Dowd addresses the City Council and says "First of all, your president is pathetic and hopeless and is not doing a very good job and you need to get together and lose her because, because see when Eric is not here - sit down [Councilman] LaBonge, just sit down." (Joint Statement RE Incident No. 4 at 1.) Council members then discuss the incident with City Attorney Dion O'Connell who advises them as follows: "The speaker should not engage in personal attacks on the councilmembers. He can speak about the performance of the City services and the councilmembers but not engage in personal attacks." (Id.) Dowd begins speaking again.

> DOWD: See when it's just me it's I, Matthew Dowd and when I'm talking to you that's the part that's not allowed but when I'm talking about you that's the third person and you did it to me yesterday so I'm filing on the decorum. I got to sue for the 42.15 you are still using the words inextricably intertwined but there's no guidelines for what that fucking means. I am tired. . . .
>
> PERRY: Thank you very much, that is the end of your time now. [11]
>
> LABONGE: He [*55] should be removed.
>
> PERRY: Okay, thank you.
>
> LABONGE: He should be removed from the meeting.
>
> PERRY: Mr. Officer if you can please escort Mr. Dowd to the door. Thank you very much.
>
> . . .
>
> O'CONNELL:It is within the Council's discretion to ban him from attending, or from speaking, he can attend the meetings but he can't speak for a certain amount of time. In the past it has been 3 days, then since the new Council rules, Council can ban him for up to 30 days.
>
> PERRY: Would someone like to make a motion.
>
> ZINE: I make a motion for 30 days.

The council then voted 11 to 1 to ban him for 30 days.

> 11 The video appears to indicate that Dowd had 15 seconds remaining on his clock.

The City argues that "Dowd's actions disrupted the meeting by shifting the focus to the speaker's improper language and conduct rather than the issues and business before the Council. His personal attacks directed toward individual Councilmembers did not further the governmental process or enlighten either the Council or the public regarding items of City business, they simply delayed the City Council meeting and impeded the City Council's ability to efficiently complete its business." (Defendant's Position on Incident No. 4 at 1.) [*56] The court disagrees. Calling the Council president "pathetic and hopeless" and saying she is "not doing a very good job and you need to get together and lose her" is political speech at the heart of the *First Amendment*. As Councilwoman Perry says during the incident, "Whether I like what he has to say or not, which I actually don't like, . . . he still has the right to say it." (Joint Statement RE Incident No. 4 at 2.) While the frustration of Councilmembers is understandable, so is the frustration of Dowd at experiencing an interruption that "broke[] [his] whole thread." (Id.)

The City does not point to, nor does the court discern in the video, any disruption beyond Dowd's speech. It appears based on this video, taken with the other incidents, that it was Dowd's use of a profanity ("there's no guidelines for what that fucking means") that was the basis for dismissing him from the meeting and for the weighty punishment of barring him from speaking for 30 days. [12] But '[a] speaker may not be removed from a meeting solely because of the use of profanity unless the use of profanity actually disturbs or impedes the meeting." *Acosta, 718 F.3d at 810 n.5*. The court finds that no actual disturbance [*57] took place here. This is also the case in Incidents 5, 7, 8, 9, 10, 11, 12, and 13. In all of those instances, the court finds that there is no actual disturbance beyond breaching the Rules by the use of profanity.

> 12 Taken together, the evidence strongly suggests that the City Council believed that profanity was a sufficient basis on which to eject a speaker. For instance, in Incident No. 11, February 14, 2012, Dogg is allowed without interruption to sing a rendition of a Whitney Houston song to express his love for Councilmember Parks, but is ejected when he says, "As Matt Dowd would say that is fucked up." (Joint Statement RE Incident No. 12 at 2.) The song is not considered a disruption, but the profanity is.

If profanity takes a speaker off topic, it could be grounds to silence the speaker because it would impede the progress of the meeting. However, the profanity in the video evidence of these incidents is in the service of making a point that is related to the issue at hand, if not taking the discussion in the direction that the Council intends. For instance, in Incident No. 12, February 14, 2012, Zuma Dogg used a profanity as an intensifier in the context of a critique of the [*58] City Attorney. (Joint Statement RE Incident No. 12 at 2 ("[T]hen we'll see what the jury has to say so Carmen Trutanich can spend millions and millions and millions and millions of dollars [and] outside counsel can drag it out and I only want a fraction. As Matt Dowd would say that is fucked up.").)

Additionally, even where profanities are not involved, in some instances, the City's determination that certain comments are not on topic results in a limitation of political speech. For instance, in Incident No. 6 from October 15, 2010, Dowd was again removed from a meeting, this time because he was not on topic. The subject was the funding of the Pacoima Christmas Parade. Pacoima is in City Council District 7, of which Richard

Alarcon was the representative. Before Dowd began to comment, Dogg stated, "My public comment is that I want council to discuss the legality of this when you've got a criminal taking the money." Dowd then came to the podium. Dowd and Councilman Zine had an interchange about the relevance of Dogg's and Dowd's comments to the agenda item:

> ZINE: The subject matter is the Christmas Parade. That's the debate right now.
>
> DOWD: Okay, and I'm talking about Richard Alarcon's [*59] performance in his council district. What's wrong with that?
>
> ZINE: That is not the issue. That is not the issue.
>
> DOWD: It's in his district and he's getting money out of the general fund . . .
>
> ZINE: The issue is the Christmas Parade in Pacoima . . .
>
> DOWD: Get the City Attorney, please, get your head on the hook . . .
>
> ZINE: The Christmas Parade is the subject . . .
>
> DOWD: Exactly, and I'm against it because Richard Alarcon shouldn't be a councilman right here and if he stays you're going to have to put up with it . . .
>
> ZINE: Mr. Dowd, Mr. Dowd, you're finished for the day
>
> DOWD: . . . public comment
>
> ZINE: Mr. Dowd, you're finished for the day. You're finished for the day, Mr. Dowd. Sergeant at Arms, remove him from chambers. He's finished for the day.

(Joint Statement RE Incident No. 6 at 10.) The court finds the discussion of a councilman's alleged criminal activities is relevant to a discussion of funding that the City intends to give to that councilman's District. Indeed, this incident is exemplary of why it is unconstitutional to restrict speakers from making personal attacks in City Council meetings; it chills speech critical of elected officials, which is speech at the heart of the *First Amendment*.

In [*60] one of the largest cities in the world, it is to be expected that some inhabitants will sometimes use language that does not conform to conventions of civility and decorum, including offensive language and swear-words. As an elected official, a City Council member will be the subject of personal attacks in such language. It is asking much of City Council members, who have given themselves to public service, to tolerate profanities and personal attacks, but that is what is required by the *First Amendment*. While the City Council has a right to keep its meetings on topic and moving forward, it cannot sacrifice political speech to a formula of civility. Dowd and Dogg "may be a gadfly to those with views contrary to [their] own, but *First Amendment* jurisprudence is clear that the way to oppose offensive speech is by more speech, not censorship, enforced silence or eviction from legitimately occupied public space." *Gathright v. City of Portland, Or., 439 F.3d 573, 578 (9th Cir. 2006)*. The city that silences a critic will injure itself as much as it injures the critic, for the gadfly's task is to stir into life the massive beast of the city, to "rouse each and every one of you, to persuade [*61] and reproach you all day long." (Plato, Five Dialogues, Hackett, 2d Ed., Trans. G.M.A. Grube, 35 (Apology).)

The court GRANTS summary judgment to Plaintiffs on the as-applied challenge to the Rules of Decorum. The court declines to issue a preliminary injunction but finds that the provisions of the Rules of Decorum at issue here are constitutional only when there is an actual disruption beyond a per se breach of the Rules.

3. California Constitution

The California Constitution provides, "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." *Cal. Const. art. I, § 2*. "The California Constitution, and California cases construing it, accords greater protection to the expression of free speech than does the United States Constitution." *Gonzales v. Superior Court, 180 Cal. App. 3d 1116, 1122, 226 Cal. Rptr. 164 (Ct. App. 1986)*. Because the California Constitution is more protective of free speech than the U.S. Constitution, the court finds that as applied the Rules of Decorum violate *Article I § 2* as well. [13]

> 13 Due to insufficient briefing, the court declines to address [*62] whether the Rules of Decorum are facially unconstitutional under the California constitution.

E. Damages Claims

The City has presented evidence indicating that Plaintiffs did not suffer economic loss due to the 2008 Ordinance. (See, e.g., City Exhs. 28, 49, 68, 317, 325, 327-32, 335-44, 355-56, 360, 362.) Plaintiffs have presented evidence in the form of their declarations indicating that they suffered economic loss and potentially compensable emotional distress. (See, e.g., Saltsburg Decl. ¶ 74.) Emotional distress damages need not be based on objective evidence. *Zhang v. American Gem Seafoods, Inc., 339 F.3d 1020, 1040 (9th Cir. 2003)*,

citing *Passantino v. Johnson & Johnson Consumer Prods., Inc., 212 F.3d 493, 513 (9th Cir. 2000)*. The court finds that there is an issue of fact as to the compensatory damages suffered by Plaintiffs and DENIES summary judgment on the issue of damages.

IV. CONCLUSION

For the reasons stated above, the court GRANTS summary judgment in favor of Defendants on the 2006 Ordinance. The court GRANTS summary judgment in favor of Defendants on the Permit and Lottery system, the height restriction, the rotation requirement, and the sunset requirement. The court GRANTS [*63] summary judgment in favor of Plaintiffs on the amplified sound ban. The court GRANTS summary judgment in favor of Defendants on the facial constitutionality of the Rules of Decorum under the United States Constitution, but GRANTS summary judgment in favor of Plaintiffs on their as-applied challenge to the Rules of Decorum under the United States Constitution and the California constitution. The court declines to issue a preliminary injunction but finds that the provisions of the Rules of Decorum at issue here are constitutional only when there is an actual disruption beyond a per se breach of the Rules. The court DENIES summary judgment on the issue of damages.

IT IS SO ORDERED.

Dated: August 7, 2013

/s/ Dean D. Pregerson

DEAN D. PREGERSON

United States District Judge

CITY OF FOUNTAIN VALLEY

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Website: www.fountainvalley.org Email: fvproud@fountainvalley.org

May 13, 2014

MAY 16 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: **AB 194 (Campos) Local Government. Open Meetings.** *(As amended January 27, 2014)*
Oppose Unless Amended

Dear Assembly Member Campos:

On behalf of the City of Fountain Valley, I regret to inform you of our conditional opposition to AB 194. This measure would unnecessarily hinder the ability of local governments to make decisions on major projects and other matters of public importance.

As a local government, we are committed to upholding the Brown Act, and take steps to do so on a regular basis, ensuring open meetings that have observed public notice requirements, properly agendizing action items, and allowing for a period of public comment. We see no benefit from this legislation, which apparently seeks to use the Brown Act as a vehicle to sue to invalidate or delay actions taken by local governments. Our concern with this approach is that it will be abused by every gadfly in our jurisdiction who opposes a decision taken by our city council on any given action item on the council's agenda.

We are aware of the January 27th amendments to the bill, but they do not address the basic concerns our city has with this legislation: that it will be used as yet another stumbling block by opponents of local projects or initiatives. The proposed amendment, while it limits the scope of the measure to action on specific agenda items alleged to have been taken in violation of Government Code Section 54954.3, still leaves local governments exposed to litigation that may be motivated by issues unrelated to the Brown Act. AB 194 provides not merely district attorneys, but private opponents of governing body actions with a litigation tool to use as a weapon to invalidate, or at a minimum delay, actions of local legislative bodies.

We are not convinced that such a tool is necessary in light of current law, which already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. This law prohibits the chairperson from stopping a speaker's comments because he or she disagrees with the speaker's point of view.

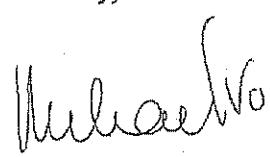
We must unfortunately oppose this measure unless it is amended to limit the ability to file suit seeking to nullify a legislative body's action, to district attorneys. Such an amendment would greatly reduce the volume of improper litigation we expect to result should AB 194 become law. The remedy AB 194 seeks is a matter of considerable gravity. It would place in the hands of a single private individual the power to set in motion a process that could invalidate a decision not of one elected official, but of an entire duly elected governing body. We therefore believe it appropriate to limit the investment of such power to a district attorney, an individual who by definition is an officer of the court, and can thus render the best and most reasoned judgment on whether to proceed with an effort to seek a court order overturning a governing body's action.

The Brown Act is intended to ensure transparency and public participation in government, thereby preserving the integrity of government's decision-making process. However, it does not guarantee each and every citizen the opportunity to speak at length on a matter being considered by a governing body. As you know, being a former local elected official, public comment is often limited during council meetings – as it is in legislative hearings in our State Capitol – for entirely legitimate reasons having nothing to do with the Brown Act or efforts to curtail individual freedom of speech.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in regard to many actions undertaken by legislative bodies statewide.

For these reasons, the City of Fountain Valley must oppose AB 194 unless to limit the ability to file and action nullifying a governing body's decision to a district attorney. Should you have any questions, please contact Matt Mogensen, Assistant to the City Manager at (714) 593-4410 or matt.mogensen@fountainvalley.org or George Mavritsakis, Graduate Intern at (714) 593-4410 or george.mavritsakis@fountainvalley.org.

Sincerely,



Michael Vo
Mayor

Cc: Honorable Lou Correa
Honorable Travis Allen
Tony Cardenas, League of California Cities
Tim Cromartie, Legislative Representative, tcromartie@cacities.org
Meg Desmond, League of California Cities, mdesmond@cacities.org

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January 9, 2014

JAN 09 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: **AB 194 (Campos) Local Government. Open Meetings.** *(As amended January 6, 2014)*
Hearing Date: January 15, 2014 – Assembly Local Government Committee
Notice of Opposition

Dear Assembly Member Campos:

On behalf of the League of California Cities, I regret to inform you of our continued opposition to AB 194, as amended on January 6th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

The proposed amendment would remove the misdemeanor penalty for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. However, a very troubling provision remains in the form of authorization for actions for a judicial determination that a decision taken by a legislative body or local agency in violation of the Brown Act is null and void. This is a disruptive approach that distorts an existing provision of the Brown Act that was intended only to preclude governing bodies from holding secret proceedings.

First, current law already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the viewpoints of the speaker.

In addition, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. A local legislative body may establish rules for the conduct of its proceedings. However, these rules must preserve constitutional rights and be reasonable and not arbitrary and capricious.

This authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

The law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom of speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [Government Code Section 54950-54963]. A legislative body is permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) Chapter 732, Statutes of 2012, which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably oppose AB 194. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8252.

Sincerely,

Tim Cromartie
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS

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January 7, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098

Re: Assembly Bill 194 (Campos), re: Open Meetings: Protection for Public Criticism
California Association of Clerks and Election Officials...OPPOSE

Dear Assemblymember Achadjian:

The California Association of Clerks and Election Officials (CACEO) opposes Assembly Bill 194 (Campos), as amended on January 6, 2014. The measure would provide that any interested member of the public or the district attorney may seek a judicial determination that an action taken by a legislative body is null and void if the legislative body violated Government Code Section 54954.3 regarding public comment. The measure is scheduled to be heard in your Committee on Wednesday, January 15, 2014.

Existing law permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Brown Act. AB 194 would amend Section 54960.1 to add any violation of Section 54954.3, regarding public comment—not limited to subdivision (c) dealing with criticism of the public body—to the list of Brown Act sections subject to legal action.

Making any alleged violation of Section 54954.3 subject to this process potentially would subject a board of supervisors and other county boards, committees and commissions to additional costly litigation brought by any person. For example, a person could file a court action at any time he/she believed these other legislative bodies—which number in the thousands around the State—failed to adopt "reasonable regulations" that allow the public to "directly address the legislative body on any item of interest to the public."

We believe that the safeguards already contained in the Brown Act are sufficient.

CACEO urges that you hold AB 194 in Committee.

Sincerely,

Matt Siverling
Legislative Advocate

CC: Each Member/Consultant, Assembly Local Government Committee

Association of
California Water Agencies
Since 1910

January 10, 2014

The Honorable Katcho Achadjian
Assembly Committee on Local Government
State Capitol, Room 4098
Sacramento, CA 95814

Re: Assembly Bill 194 (Campos) - OPPOSE

Dear Chair Achadjian:

On behalf of the Association of California Water Agencies (ACWA), I am writing to express ACWA's opposition to AB 194 (Campos) regarding actions for violations of open meetings.

AB 194 would allow a district attorney or an individual to file a lawsuit to void any action taken by a legislative body when it has been found in violation of government code section 54954.3, the law governing protection for public criticism.

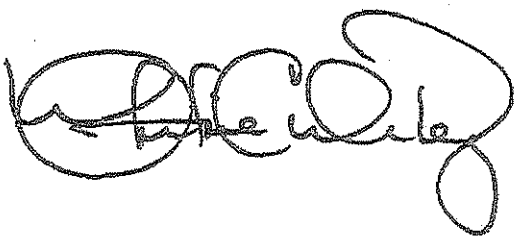
While we support the public's opportunity to address the public board with their issues and concerns, we are concerned that the bill as written would prohibit the chairperson of the public board to place a time limit on the public's opportunity to comments on specific items on the agenda.

Unfortunately, it is often the unpopular decisions that are the most controversial and contentious, for both board members themselves and constituents. It is often the case that these contentious meeting are also the best attended meetings and time management is of the essence in order to get the public agency's business done in a timely efficient manner. Without time limits on comments, many of these meetings would be unmanageable, lasting far into the night. AB 194 would allow anyone who believes that they weren't afforded all the time they thought they should have to provide public comment to bring an action against the chair.

It is our belief that the Brown Act currently provides the needed protection for the public to provide public comments on issues at a public agency board meeting. AB 194 is repetitive and unnecessary.

For the aforementioned reasons, ACWA opposes AB 194 and requests your "NO" vote when the bill is heard in the Assembly Local Government Committee on January 15, 2014.

Sincerely,



Whitnie Wiley
Legislative Advocate

WW:aa

cc: The Honorable Nora Campos
Members, Assembly Committee on Local Government
Angela Mapp, Principal Consultant, Assembly Committee on Local Government
William Weber, Consultant, Assembly Republican Caucus

association of california
school administrators

officers
president Mark Eckert, Ph.D. president-elect Randall V. Dolling, Ed.D. vice president Tom Armellino
vice president for legislative action Lisa Gonzales, Ed.D. past president David A. Gomez, Ph.D. executive director Wesley Smith, Ed.D

January 8, 2014

The Honorable Nora Campos
Speaker Pro Tempore
State Capitol, Room 3013
Sacramento, CA 95814

AB 194: OPPOSE

Dear Speaker Pro Tempore Campos:

The Association of California School Administrators, ACSA, has reviewed your AB 194 and must respectfully oppose this measure. AB 194 will be heard in the Assembly Local Government Committee on January 15, 2014.

AB 194 would negate any action taken by a school district or county office of education if that action was taken in accordance of curtailing public comment/criticism associated with the Brown Act. Under the Brown Act, governing boards of school districts and county offices of education adhere to strict rules. Every agenda for a regular or special meeting must allow members of the public to speak on any item of interest so long as the item is within the subject matter jurisdiction of the local entity, including criticism of policies, procedures, programs or services of that entity. The Brown Act does allow the school district to adopt reasonable regulations including time limits on public comments. It is only in this way that a meeting can be effectively run so that all issues on an agenda can be dealt with.

Under current law, individuals have had the ability to pursue litigation over an allegation that a school district or county office of education has violated the Brown Act. As you know, two years ago, SB 1003 (Yee) added a process for bringing forth allegations of past Brown Act violations. The ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

ACSA's opposition to AB 194 is in regards to the provisions which would nullify an action of a school district or county office of education if during the discussion of that item, an individual's criticism is curtailed or public comment was not allowed. The "null and void" provisions of the Brown Act exists to address decisions made in a secret and undisclosed manner when no other remedy exists. AB 194 expands the use of the "null and void" decision to challenge any controversial public decision or limitation on comment.

There is no issue more important to a community than the education of their children. Discussions at the local board level can be quite passionate necessitating the need for school district governing boards to continue to utilize their discretion in not only providing time limits for testimony, but to also stop discussion if the audience becomes unruly. AB 194 might be necessary if the Brown Act did not already

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www.acsa.org

expressly require public comment and criticism on any issue before the board or within its jurisdiction. But ACSA believes AB 194 will result in the disruption of many decisions decided by governing boards because of the threat of litigation.

For these reasons, ACSA must respectfully oppose AB 194.

Sincerely,

Laura Preston

Laura Preston
Legislative Advocate

cc: Members of the Assembly Local Government Committee
Mia Yokoi-Shelton, Consultant to the Assembly Local Government Committee
William Weber, Republican Consultant

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January 29, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: **FLOOR ALERT**
AB 194 (Campos) Local Government. Open Meetings. *(As amended January 27, 2014)*
Notice of Opposition Unless Amended

Dear Assembly Member Campos:

On behalf of the League of California Cities, I regret to inform you of our continued opposition to AB 194, as amended on January 27th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

We appreciate your willingness to amend this legislation in response to the objections voiced by local government. However, the January 27th amendments do not address the fundamental concerns of local government: that the potential to nullify a legislative body's action will be employed as yet another stumbling block by opponents of local projects or initiatives. The proposed amendment, while it limits the scope of the measure to action on specific agenda items alleged to have been taken in violation of Government Code Section 54954.3, still leaves local governments exposed to litigation that may be motivated by issues unrelated to the Brown Act. AB 194 provides not merely district attorneys, but private opponents of governing body actions with a litigation tool to use as a weapon to invalidate, or at a minimum delay, actions of local legislative bodies.

We are not convinced that such a tool is necessary in light of current law, which already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the speaker's point of view.

We must unfortunately remain opposed to this measure unless it is amended to limit the ability to file suit seeking to nullify a legislative body's action, to district attorneys. Such an amendment would greatly reduce the volume of improper litigation we expect to result should AB 194 advance in its current form. The remedy AB 194 seeks is a matter of considerable gravity. It would place in the hands of a single private individual the power to set in motion a process that could invalidate a decision not of one elected official, but of an entire duly elected governing body. We therefore believe it appropriate to limit the investment of such power to a district attorney, an individual who by definition is an officer of the court, and can thus render the best and most reasoned judgment on whether to proceed with an effort to seek a court order overturning a governing body's action.

The Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, stifling neither public comment nor government officials, nor impeding the effectiveness and natural operation of government.

California law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom of speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [Government Code Section 54950-54963]. A legislative body is permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) Chapter 732, Statutes of 2012, which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably continue oppose AB 194 unless it is amended along the lines referenced above. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8252.

Respectfully,

Tim Cromartie

Tim Cromartie
Legislative Representative

cc: Members of the Assembly
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

OFFICE OF THE
CITY COUNCIL

JAY SCHENIRER

COUNCILMEMBER
DISTRICT FIVE

CITY OF SACRAMENTO
CALIFORNIA

JAN 22 2014

January 10, 2014

Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: ASSEMBLY BILL 194 (CAMPOS) – OPPOSE

Dear Assembly Member Campos:

On behalf of the City of Sacramento, we regret to inform you of our opposition to your Assembly Bill 194 which would subject individual members of a legislative body to a misdemeanor for violating a portion of our state's open meeting laws, commonly referred to the Brown Act.

Under California's Brown Act, local agency governing boards (e.g., a city council) must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. The Brown Act specifically references a prohibition of a legislative body for curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) of last year which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We see no reason for subjecting an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency, and ensures that only conscious scofflaws are threatened with criminal prosecution. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

915 I STREET 5th FLOOR, SACRAMENTO, CA 95814-2604
PH 916-808-7005 • FAX 916-264-7680 • jschenirer@cityofsacramento.org

We are troubled by AB 194, as it will have a chilling effect on any attempt to enforce reasonable regulations for public comment such as the time limits for speakers.

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. Local governments cannot afford additional frivolous lawsuits.

If you have any questions or concerns regarding our position, please do not hesitate to contact Randi L. Knott, Intergovernmental Relations Officer at 916-808-5771.

Sincerely,

Jay Schenirer
Chair, Law and Legislation Committee

cc: Honorable Darrell Steinberg
Honorable Roger Dickinson
Honorable Dr. Richard Pan
Members of the Assembly Local Government Committee

Solano County Taxpayers Association
Ourania Riddle, President
P.O Box 31
Dixon, CA 95620
<solanotaxpayers@sbcglobal.net>

January 31, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

Via Fax and e-mail

RE: AB 194 (Campos) Local Government. Open Meetings.

Dear Assemblywoman Nora Campos

The Solano County Taxpayers Association (SCTA) whole heartedly supports AB 194.

Our members attend numerous governmental meetings and we are appalled the way local governments treats the public during those meetings.

From experience, we would suggest to amend and add to this bill the requirement that District Attorneys receive training on the Ralph M. Brown Act, the law that they must enforce. In Solano County District Attorney Donald du Bain told our group that he "has no clue of the Brown Act." Thus, he does not act upon any Brown Act complaint submitted by Solanians.

Under the Brown Act, agencies can place reasonable restrictions on the time, place and manner of public comment. But too often agencies use this as a tool to shut down public comments.

For example, the Solano County Board of Supervisors does not allow the public to speak on any agenda item unless a Speaking Card has been submitted in advance, thus denying people's right to speak anonymously.

Assembly Bill AB194 is needed. It is the beginning of putting some teeth in the Brown Act the 60-year-old Open Meeting Law.

By copying of this letter WE are encouraging our Assembly and State representatives to support AB 194 Local Government. Open Meeting

Yours in community service,

Ourania Riddle

Ourania Riddle, President
Solano County Taxpayers Association.

cc: Assembly member: Mariko Yamada 4th Dist.
Assembly member: Jim Frazier 11th Assembly Dist.
Assembly member: Susan Bonilla 14th Assembly Dist
Senate Member: Lois Wolk 3rd Senatorial Dist.

LEHMAN LEVI PAPPAS & SADLER

FAX TRANSMITTAL

TO: Nora Campos	**FROM:** Fernando Vasquez, City of Downey Mayor
FAX:	**PAGES:** 03 (Including Cover)
DATE: Wednesday, January 29, 2014	
RE: AB 194 (Campos) Letter of Opposition	

COMMENTS:

JAN 29 2014

___ Urgent ___ As Requested ___ FYI _X_ Please Review

1215 K Street ♦ Suite 1010♦ Sacramento, CA 95814
Phone (916) 441-5333 ♦ Fax (916) 441-5338

City of Downey

FUTURE UNLIMITED

Downey All-America City 2013

January 27, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: AB 194 (Campos) Local Government. Open Meetings – Notice of Opposition

Dear Assembly Member Campos:

As Mayor of the City of Downey, I regret to inform you of our opposition to AB 194, as amended on January 6th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

The proposed amendment would remove the misdemeanor penalty for a member of a legislative body to prohibit public criticism protected under the Ralph M. Brown Act. But, the bill still allows a court to determination that a decision taken by a legislative body or local agency in violation of the Brown Act is null and void. This is a disruptive approach that distorts an existing provision of the Brown Act that was intended only to preclude governing bodies from holding secret proceedings.

Current law already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. Furthermore, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. Rules may be established for the proceedings, but these rules must preserve constitutional rights and be reasonable.

The authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens a new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

If you would like to contact me regarding this issue, please call me at (562) 904-7474.

Sincerely,

CITY OF DOWNEY

Fernando Vasquez
Mayor

FV:sc

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

H://CCouncil/LettersofOpposition/AB194-BrownAct-Assy.Mem.Campos-1-27-14

January 27, 2014

JAN 29 2014

The Honorable Nora Campos
California State Assembly
State Capitol Bldg, Room 3013
Sacramento, CA 95814
FAX: (916) 319-2127

RE: ASSEMBLY BILL (AB) 194 LOCAL GOVERNMENT: OPEN MEETINGS (As amended January 6, 2014) NOTICE OF OPPOSITION

Dear Assembly Member Campos:

I regret to inform you that the City of Vista opposes your AB 194, as amended January 6th, due to the constriction it places upon local governments to conduct business and exercise reasoned judgment on matters of public importance.

The amendment removes the misdemeanor penalty for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act, and authorizes judicial determination rendering null and void any decision taken by a legislative body or local agency in violation of the Brown Act. This distorts an existing provision of the Brown Act intended only to preclude governing bodies from holding secret proceedings.

Current law already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions. The chairperson cannot stop a speaker because he or she disagrees with their viewpoint. In addition, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. The authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Finally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens a new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the City of Vista is opposed to AB 194.

Sincerely,

Judy Ritter
Mayor

cc: Assemblyman Rocky Chavez; FAX: 916-319-2176
Senator Mark Wyland; FAX; 916-446-7382
Assemblywoman Marie Waldron; FAX: 916-319-2175
League of California Cities; FAX: 916-658-8240

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www.cacities.org

January 30, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

JAN 31 2014

RE: AB 194 (Campos) Local Government. Open Meetings. *(As amended January 27, 2014)*
Notice of Opposition Unless Amended

Dear Assembly Member Campos:

On behalf of the League of California Cities, I regret to inform you of our continued opposition to AB 194, as amended on January 27th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

We appreciate your willingness to amend this legislation in response to the objections voiced by local government. However, the January 27th amendments do not address the fundamental concerns of local government: that the potential to nullify a legislative body's action will be employed as yet another stumbling block by opponents of local projects or initiatives. The proposed amendment, while it limits the scope of the measure to action on specific agenda items alleged to have been taken in violation of Government Code Section 54954.3, still leaves local governments exposed to litigation that may be motivated by issues unrelated to the Brown Act. AB 194 provides not merely district attorneys, but private opponents of governing body actions with a litigation tool to use as a weapon to invalidate, or at a minimum delay, actions of local legislative bodies.

We are not convinced that such a tool is necessary in light of current law, which already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the speaker's point of view.

We must unfortunately remain opposed to this measure unless it is amended to limit the ability to file suit seeking to nullify a legislative body's action, to district attorneys. Such an amendment would greatly reduce the volume of improper litigation we expect to result should AB 194 advance in its current form. The remedy AB 194 seeks is a matter of considerable gravity. It would place in the hands of a single private individual the power to set in motion a process that could invalidate a decision not of one elected official, but of an entire duly elected governing body. We therefore believe it appropriate to limit the investment of such power to a district attorney, an individual who by definition is an officer of the court, and can thus render the best and most reasoned judgment on whether to proceed with an effort to seek a court order overturning a governing body's action.

The Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, stifling neither public comment nor government officials, nor impeding the effectiveness and natural operation of government.

California law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom of speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [Government Code Section 54950-54963].
A legislative body is permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) Chapter 732, Statutes of 2012, which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably continue oppose AB 194 unless it is amended along the lines referenced above. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8252.

Respectfully,

Tim Cromartie
Legislative Representative

cc: Chair and Members, Senate Committee on Governance and Finance
Toby Ewing, Consultant, Senate Committee on Governance and Finance
Ryan Eisberg, Consultant, Senate Republican Caucus

3013

URBAN COUNTIES CAUCUS
1100 K Street, Suite 101
Sacramento, CA 95814
(916) 327-7531

RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
1215 K Street, Suite 1650
Sacramento, CA 95814
(916) 447-4806

March 21, 2013

The Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – OPPOSE

Dear Assembly Member Campos:

On behalf of the thirty-two member counties of the Rural County Representatives of California (RCRC) and the twelve member counties of the Urban Counties Caucus (UCC), it is with great regret that we inform you of our opposition to your Assembly Bill 194 which would subject individual members of a legislative body to a misdemeanor for violating a portion our state's open meeting laws (commonly referred to the Brown Act).

Under California's Brown Act, local agency governing boards (e.g., a county board of supervisors) must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. This section of the Brown Act specifically references a prohibition of a legislative body from curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) of last year which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

To be frank, we see no reason for subjecting an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency, and ensures that only conscious scofflaws are threatened with criminal prosecution. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

We are troubled by AB 194, as it will have a chilling effect on any attempt to enforce reasonable regulations for public comment (which are expressly authorized by the Brown Act). Simply put – any public comment, even if critical, can be limited in accordance with content-neutral rules (such as individual or aggregate time limits). Any time that critical comment is curtailed, the speaker may charge that the critical content of their speech was a motivating factor – a charge that depends on subjective perception, and may be difficult to disprove. If those that chair public meetings are faced with criminal prosecution arising from such disputes, they will inevitably show great reluctance in expediting the agenda for fear of crossing the fine line between reasonable regulation and impermissible prohibition of "criticism".

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

Again, current law provides members of the public plenty of options if they believe their 1st Amendment rights have been violated or their ability to offer comment/ criticism was breached. For these reasons, we are strongly opposed to AB 194.

If you have any questions or concerns regarding our position, please do not hesitate to contact Paul A. Smith of RCRC at 916-447-4806 and/or Jolena Voorhis of UCC at 916-327-7531.

Sincerely,

PAUL A. SMITH
Senior Legislative Advocate

JOLENA VOORHIS
Executive Director

cc: Members of the Assembly Local Government Committee

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500
Facsimile
916.441.5507

April 17, 2013

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

RE: AB 194 (Campos) – Open meeting; protections for public criticism: penalties for violations.
As Introduced 1/28/13 – OPPOSE
Set for hearing April 24, 2013 – Assembly Local Government Committee

Dear Assembly Member Achadjian:

The California State Association of Counties must regretfully oppose Assembly Bill 194, by Assembly Member Nora Campos, which would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act (Brown Act).

Current law states that a member of a legislative body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act 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 is guilty of a misdemeanor. The Brown Act additionally prohibits members of a legislative body from disallowing public criticism of the policies, procedures, programs, or services of the legislative body. The intent of this language is consistent with the Brown Act's overarching goal of transparency and ensures the public's right to information.

AB 194 contains no stipulation that the chairperson of a legislative body of a local agency who acted to prohibit public criticism did so with the willful intent to deprive the public of information to which it is entitled. This lack of a requirement that the action be an overt act from which criminal intent can be inferred will expose members of local government agencies to unnecessary criminal prosecution and soaring legal bills for actions that were not purposefully intended to violate the law. AB 194 would also place on the chairperson a nearly impossible burden of proof that intent to violate the law did not exist.

Also permitted by the Brown Act is the ability for legislative bodies to adopt the requirement that public comment be content-neutral and to apply reasonable time periods for public comment. In fact, it was concluded by the Attorney General (75 Ops.Cal.Atty.Gen. 89 (1992)) that five minutes per speaker is a reasonable time period by which to limit public testimony for local public agency meetings; in *Chaffee v. San Francisco Public Library Commission* (134 Cal.App.4th 109), it was determined by the court that limiting public comment to two minutes per speaker was not a Brown Act violation. AB 194, however, would limit the chairperson's ability to place reasonable time limits on public comment for the purpose of ensuring the timely conduction of public business since a speaker may easily charge that such restrictions were applied due to the content of their comments.

County agencies conduct public business cognizant of the responsibility to ensure transparency and public access to information. As such, we support open meetings and the right of the public to comment on issues and criticize various county policies and procedures. However, we believe that current law provides sufficient legal remedies for individuals who allege a Brown Act violation and

3013
Campos

do not support reducing the ability for counties to effectively conduct county business or subjecting members of local agency legislative bodies to criminal prosecution for what may be unintentional actions. For these reasons, CSAC opposes AB 194. If you need additional information regarding our position on this measure, please do not hesitate to contact me at 916-650-8180 or eortega@counties.org

Sincerely,

Eraina Ortega

Eraina Ortega
Senior Legislative Representative

cc: The Honorable Norma Campos, California State Assembly
Members and Consultant, Assembly Local Government Committee

LEAGUE OF CALIFORNIA CITIES
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April 17, 2013

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: **AB 194 (Campos) Local Government. Open Meetings.** *(As introduced)*
Hearing Date: April 24, 2011 – Assembly Local Government Committee
Notice of Opposition

Dear Assembly Member Campos:

On behalf of the League of California Cities, we regrettably must oppose your AB 194. Your measure would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act.

First, the law already explicitly provides that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [GC. 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the viewpoints of the speaker.

Additionally, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. A local legislative body may establish rules for the conduct of its proceedings. However, these rules must preserve constitutional rights and be reasonable and not arbitrary and capricious.

This authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

The law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom of speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [GC. 54950-54963]. A legislative body is permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee; 2012) which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

This measure seems heavy handed in light of the remedies available to the public. AB 194 subjects an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably oppose AB 194. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8254.

Sincerely,

Natasha M. Karl

Natasha M. Karl
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

California Special Districts Association
Districts Stronger Together

April 16, 2013

The Honorable Nora Campos
California State Assembly
State Capitol Building
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – Notice of Opposition [As introduced]
Hearing Date: April 24 – Assembly Local Government Committee

Dear Assembly Member Campos:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations, regrets to inform you of our opposition to your Assembly Bill 194, related to public criticism directed at local legislative bodies. Unfortunately, AB 194 would unnecessarily hinder special district boards' ability to conduct business on behalf of the millions of Californians who rely on them for core local services such as water, sanitation, fire protection, and healthcare.

CSDA fully supports and encourages public participation and engagement with their local government agencies and elected officials. Unfortunately, AB 194 would detract from, rather than promote, this practice. The bill provides that if a chair of the local legislative body prohibits public criticism of the policies, procedures, programs, or services of the agency or of the acts or omissions of the legislative body, that individual shall be guilty of a misdemeanor. Current law already provides protection for this type of speech, a violation of which is an infraction. In addition, AB 194 adds the entire current Government Code Section 54954.3, related to public comment, to the existing list of Brown Act laws subject to "cure and correct" penalties. This creates a set of circumstances that is unproductive not only to the local legislative body but also public participation.

A key duty of the chair is to ensure the orderly conduct of business. However, under AB 194, their hands would be tied in regulating abusive or threatening comments to avoid the threat of *criminal* charges for failing to adhere to procedural requirements. The chair would also be reluctant to cut-off a person who exceeded the designated time allotment or spoke out of turn, thus delaying others' opportunity to offer comments and participate in the public meeting. Finally, we are concerned that the provisions of this measure would have a chilling effect on volunteerism. Individuals may be hesitant to get involved and lead local boards, committees, councils, commissions, or advisory bodies in light of the potential severe or costly repercussions for any error or omission, however slight.

For these reasons, CSDA respectfully opposes your AB 194. Please do not hesitate to contact me if you have any questions regarding our position at (916) 442-7887.

Sincerely,

Dorothy Holzem
Legislative Representative

California Special Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
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Special District Risk Management Authority
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CSDA Finance Corporation
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3 of 3

COUNTY OF LOS ANGELES
Sacramento Legislative Office

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WILLIAM T FUJIOKA
Chief Executive Officer

ALAN FERNANDES
Chief Legislative Representative

April 15, 2013

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos), As Introduced – OPPOSE
Relating to the Brown Act
Set April 24, 2013 in Assembly Local Government Committee

Dear Assembly Member Achadjian:

The Los Angeles County Board of Supervisors opposes AB 194 (Campos).

The Brown Act requires that all meetings of a local legislative body be open and public, permitting all persons to attend and participate. The Act allows local agencies to establish reasonable rules to manage and conduct public comment, determining the time, place, and manner restrictions are permissible.

AB 194 makes it a misdemeanor for a member of a legislative body, while acting as a chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. It authorizes a district attorney to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void.

The Los Angeles County Executive Office of the Board has determined that AB 194 could significantly impact the Board of Supervisors and Executive Office by encouraging members of the public to file court actions against the Chair of the Board of Supervisors, as well as the chairs for the dozens of County commissions and committees.

Therefore, I request your "NO vote on AB 194. If you have any questions, please contact me at 916-441-7888.

Sincerely,

Ed Berends
Legislative Representative

C: Assembly Member Nora Campos
Each Member and Consultant, Assembly Local Government Committee

County of Tulare

April 2, 2013

The Honorable Nora Campos
Assembly Speaker Pro Tempore
State Capitol, 2175
Sacramento, CA 95814

RE: Opposition to AB 194 (Campos)

Dear Assembly Member Campos:

The County of Tulare regrets to inform you of our opposition to AB 194 which would make it a misdemeanor for a member of a legislative body of a local agency to prohibit public criticism protected under the Brown Act.

Existing law makes violation of subdivision (c) of Section 54954.3 an infraction. Existing law also permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Brown Act.

We are concerned that AB 194 would encourage court actions against chairpersons of various county commissions and committees that might ultimately result in a criminal prosecution, even where the chairperson tried to correctly apply the provisions of 54954.3(c). We also believe that this bill would encourage increased litigation under Section 54960.1 by adding violations of all of the provisions contained in Section 54954.3 to the list of sections of the Brown Act for which a district attorney or any interested person may commence a court action to correct.

Additionally, we are concerned that AB 194 would strongly discourage citizen volunteers from agreeing to serve as chairpersons of various county committees and commissions once they discover that they might be subject to criminal prosecution should they violate subdivision (c) of Section 54954.3.

For these reasons, the County of Tulare opposes this legislation. Should you have any questions or concerns, please contact Jean M. Rousseau, County Administrative Officer at (559) 636-5005 or jrousseau@co.tulare.ca.us.

Sincerely,

Pete Vander Poel, Chairman
Tulare County Board of Supervisors

Phillip A. Cox, Vice-Chairman
Tulare County Board of Supervisors

J. Steven Worthley, District Four
Tulare County Board of Supervisors

Mike Ennis, District Five
Tulare County Board of Supervisors

Allen Ishida, District One
Tulare County Board of Supervisors

cc:
Senator Jean Fuller
Assembly Member Connie Conway

Administration Bldg.
2800 West Burrel
Visalia, CA 93291

TEL: (559) 636-5000
FAX: (559) 733-6898

BOARD OF SUPERVISORS

Linda J. Seifert (Dist. 2), Chair
(707) 784-3031
Skip Thomson (Dist. 5), Vice-Chair
(707) 784-6130
Erin Hannigan (Dist. 1)
(707) 784-6662
James P. Spering (Dist. 3), Vice-Chair
(707) 784-6136
John M. Vasquez (Dist. 4)
(707) 784-6129

County Administrator
BIRGITTA E. CORSELLO
(707) 784-6100
Fax (707) 784-6665

675 Texas Street, Suite 6500
Fairfield, CA 94533-6342
http://www.co.solano.ca.us

April 17, 2013

The Honorable Katcho Achadjian
California State Assembly, District 35
Chair, Assembly Local Government Committee
State Capitol Building, Room 4098

Re: **Assembly Bill 194 (Campos) – OPPOSE**
Open meetings: protections for public criticism: penalties for violations

Dear Chair Achadjian:

On behalf of the Solano County Board of Supervisors I respectfully request that you **OPPOSE AB 194 (Campos)** when it is heard in your committee on Local Government on April 24th. This bill would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body or local agency, to prohibit public criticism protected under the Ralph M. Brown Act (Brown Act).

AB 194 contains no stipulation that the chairperson of a legislative body of a local agency who acted to prohibit public criticism did so with the willful intent to deprive the public of information to which it is entitled. The lack of this requirement will unnecessarily expose members of local government to criminal prosecution and high legal costs for actions that were not purposefully intended to violate the law. It would also place a nearly impossible burden of proof that intent to violate the law did not exist.

Local governments across this state already have limited resources. They can ill afford to be used fending off lawsuits brought about by this legislation. Given the significant challenges counties are facing at this time, we believe that the State should be looking to limit opportunities to sue, rather than encouraging them.

Aside from the potential legal ramifications, this bill would significantly affect a local government's ability to effectively and efficiently conduct public business. AB 194 would restrict a chairperson's ability to place reasonable time limits on public comment since it would allow for a speaker to easily charge that such restrictions were applied to prohibit public criticism.

Solano County supports open meetings and the right of the public to comment on issues and criticize various policies and procedures. However, we believe that current law already provides significant legal remedies for individuals who allege a Brown Act violation. AB 194 would simply hamper local governments' ability to conduct public business and unnecessarily subject local legislative bodies to costly criminal prosecution.

For these reasons, I would like to again respectfully urge that you **OPPOSE AB 194** when it is heard in your committee.

Sincerely,

Linda J. Seifert, Chair
Solano County Board of Supervisors

Cc: The Honorable Members of the Assembly Local Government Committee
Assembly Local Government Committee Consultants
The Honorable Mariko Yamada, Assembly District 4
The Honorable Susan Bonilla, Assembly District 14
The Honorable Lois Wolk, Senate District 3
Paul Yoder, Partner, Shaw / Yoder / Antwih Inc.

MAY 15 2013

City Of Camarillo

601 Carmen Drive • P.O. Box 248 • Camarillo, CA 93011-0248

Office of the City Manager
(805) 388-5307
Fax (805) 388-5318

May 9, 2013

The Honorable Nora Campos
California State Assembly
State Capitol, Room 3013
Sacramento, CA 94249

RE: Opposition to AB 194 (Campos) – Open Meetings: Protections for Public Criticism: Penalties for Violations

Dear Assembly Member Campos:

On behalf of the City of Camarillo, I would like to respectfully express our **opposition** to AB 194. This bill would make it a misdemeanor for a member of a legislative body of a local agency to prohibit public criticism protected under the Ralph M. Brown Act (Act).

Existing law makes violation of subdivision (c) of Section 54954.3 an infraction. Existing law also permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Act.

Camarillo is concerned that AB 194 would encourage court action against chairpersons of various legislative bodies and committees that may ultimately result in criminal prosecution, even where the chairperson made every effort to correctly apply the provisions of 54954.3 (c). Additionally, we believe that this bill would encourage increased litigation under Section 54960.1 by adding violations of all the provisions contained in Section 54954.3 to the list of sections of the Act for which a district attorney or any interested person may commence a court action to correct.

Lastly, we are concerned that this bill would strongly discourage citizen volunteers from agreeing to serve as chairpersons of various local government committees and commissions once they discover that they may be subject to criminal prosecution should they violate subdivision (c) of Section 54954.3.

For these reasons, the City of Camarillo respectfully **opposes** AB 194. Thank you for your consideration of the City's position on this important matter.

Sincerely,

Bruce Feng
City Manager

cc: Camarillo City Council
California Contract Cities Association
Gonsalves & Son
League of California Cities

Reeb Government Relations, LLC

April 17, 2013

The Honorable Katcho Achadjian
Chairman, Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, California 95814

RE: Assembly Bill No. 194 (Campos) – Oppose Unless Amended

Dear Assemblymember Achadjian:

I am writing on behalf of El Dorado Irrigation District (EID) to express opposition to AB 194 (Campos), relating to local government.

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency to be open and public and that all persons be permitted to attend and participate. Current law prohibits a legislative body of a local agency from preventing public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body, as specified. AB 194 would make it a misdemeanor for a member of a legislative body, while acting as the chairperson, to prohibit public criticism protected under the act. The bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified.

EID believes the creation of a misdemeanor moves beyond the current scope of enforcement under existing law, and would not allow a local agency to cure the action by which critical speech was prohibited. Further, by creating a new crime relating to the conduct of a local agency meeting, a member of the legislative body acting as chairperson might be restrained from maintaining proper decorum in the meeting for fear of criminal sanction should he or she cut off a speaker. While a member of the public has a legal right to criticize the local agency, he or she does not have a right to speak in a threatening or abusive manner. Typically, if public participation in a meeting rises to a level that threatens the safety of those in attendance or disrupts the meeting to the extent that proceedings cannot continue, the meeting must be recessed, adjourned or in limited cases, the person creating the disruption must be escorted from the meeting room. Local agency presiding officers must have the flexibility to ensure proper decorum in a public meeting. The misdemeanor provision in AB 194 would unnecessarily interfere with that function.

1107 9th Street, Suite 510
Sacramento, California 95814

(916) 558-1926 PH
(916) 558-1932 FAX

The District believes the more appropriate course of action, which is included in AB 194, is to add a violation of Section 54954.3 to the provisions of Section 54960 that will enable a court to declare the action related to the agenda item to be null and void.

Absent the deletion of the misdemeanor provision, EID respectfully requests a "NO" vote on AB 194. Thank you for your time and consideration.

Sincerely,

Robert J. Reeb

RJR:ra
Cc: The Honorable Nora Campos
Members and Consultant, Assembly Local Government Committee
Assembly Republican Office of Policy
Office of the Governor
Association of California Water Agencies

County Executive
Bradley J. Hudson

County of Sacramento

March 15, 2013

The Honorable Nora Campos
California State Assembly
State Capitol Room 3013
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos): New Misdemeanor for Brown Act Violation—OPPOSE

Dear Assembly Member Campos:

On behalf of the Sacramento County Board of Supervisors, I write to express the Board's opposition to your AB 194 which makes it a misdemeanor under the Ralph M. Brown Act for the chair of a local legislative body to prohibit public criticism. The bill also permits a district attorney or an individual to file a lawsuit to void any action the local legislative body takes in violation of the law governing public criticism.

The Brown Act already prohibits a local legislative body from prohibiting public criticism of local policies, procedures, programs, or services. We believe this prohibition is sufficient and that creating a misdemeanor is not justified. Public expression of contrary views in a public meeting is the foundation of the Brown Act. County officials, staff, and members of the public who may be serving on a local legislative body take their responsibility to carry out this provision in the Brown Act seriously.

In conclusion, we believe that current law is sufficient and AB 194 is not needed. If you need further information, I can be reached at 916-874-4627 or at enderton-speedl@saccounty.net.

Sincerely,

Laura Enderton-Speed
Governmental Relations and Legislative Officer
County of Sacramento

Cc: Members and Consultants, Assembly Local Government Committee

AMERICAN CIVIL LIBERTIES UNION of CALIFORNIA

CALIFORNIA LEGISLATIVE OFFICE
1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

January 6, 2014

JAN 07 2014

The Honorable Nora Campos
State Capitol, Room 3160
Sacramento, California 95814

Re: AB 194 – Support

Dear Assembly Member Campos:

The ACLU is pleased to inform you of our support for AB 194, as amended, related to the Brown Act.

AB 194 creates the opportunity for citizens denied the limited speech rights granted by the Brown Act under Government Code section 54954.3 to demand an opportunity to be heard enforceable by court order, if necessary. It also gives the body that had denied speech opportunities unintentionally the opportunity to "cure and correct" the oversight and avoid litigation. The current statutory remedies for violations of the public comment are insufficient to properly protect the public's right to be heard at local government meetings. We urge passage of this legislation.

If you wish to discuss this matter further, feel free to contact our office.

Sincerely,

Francisco Lobaco
Legislative Director

Cc Members & Consultant, Assembly Local Government Committee

ACLU OF NORTHERN CALIFORNIA
Abdi Soltani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Kevin Keenan, Executive Director
P.O. Box 87131
San Diego, CA 92138-7131
(619) 232-2121

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500
Facsimile
916.441.5507

January 6, 2014

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

JAN 08 2014

RE: AB 194 (Campos) – Open meeting; protections for public criticism: penalties for violations.
As Proposed to be Amended – OPPOSE
Set for hearing January 15, 2014 – Assembly Local Government Committee

Dear Assembly Member Achadjian:

The California State Association of Counties must regretfully oppose Assembly Bill 194, by Assembly Member Nora Campos, which would allow a district attorney or an individual to file a lawsuit to void any action taken by a legislative body when it has been found in violation of the law governing protection for public criticism.

Current law states that a member of a legislative body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act 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 is guilty of a misdemeanor. The Brown Act additionally prohibits members of a legislative body from disallowing public criticism of the policies, procedures, programs, or services of the legislative body. The intent of this language is consistent with the Brown Act's overarching goal of transparency and ensures the public's right to information.

The Brown Act additionally provides the ability for legislative bodies to adopt the requirement that public comment be content-neutral and to apply reasonable time periods for public comment. In fact, it was concluded by the Attorney General (75 Ops.Cal.Atty.Gen. 89 (1992)) that five minutes per speaker is a reasonable time period by which to limit public testimony for local public agency meetings; in *Chaffee v. San Francisco Public Library Commission* (134 Cal.App.4th 109), it was determined by the court that limiting public comment to two minutes per speaker was not a Brown Act violation. AB 194, however, would limit the chairperson's ability to place reasonable time limits on public comment for the purpose of ensuring the timely conduction of public business since a speaker may easily charge that such restrictions were applied due to the content of their comments and seek to nullify any action taken therein.

County agencies conduct public business cognizant of the responsibility to ensure transparency and public access to information. As such, we support open meetings and the right of the public to comment on issues and criticize various county policies and procedures. However, we believe that not only does current law provide sufficient legal remedies for individuals who allege a Brown Act violation, but that no substantial evidence has arisen to warrant the need for this legislation; AB 194 would simply reduce the ability

Campos

of counties to effectively conduct county business. For these reasons, CSAC opposes AB 194. If you need additional information regarding our position on this measure, please do not hesitate to contact me at 916-650-8171 or fconley@counties.org.

Sincerely,

Faith Conley
Associate Legislative Representative

cc: The Honorable Norma Campos, California State Assembly
Members and Consultant, Assembly Local Government Committee

California Special
Districts Association
CSDA *Districts Stronger Together*

JAN 08 2014

January 8, 2014

The Honorable Nora Campos
California State Assembly
State Capitol Building Room 3160
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – Notice of Opposition [As amended 01/06/14]

Dear Assembly Member Campos:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations, regrets to inform you of our continued opposition to your Assembly Bill 194. CSDA fully supports and encourages public participation and engagement with local government agencies and elected officials. However, AB 194 would unnecessarily hinder special district boards' ability to conduct business on behalf of the millions of Californians who rely on them for core local services such as water, sanitation, fire protection, and healthcare.

We appreciate the opportunity to discuss our concerns with your office, as well as the January 6th amendment that removes the misdemeanor penalty targeting the legislative body chair. Unfortunately, this amendment does not fully address our concerns, as outlined below.

Current Remedies are Sufficient and Appropriate
Specifically, AB 194 would create "null and void" penalties for violations of Government Code Section 54954.3, related to public comment periods. Current statute provides protections for public comment that is critical in nature, and prohibits a local legislative body from blocking such speech. Current statute also provides civil remedies for members of the public through mandamus, injunction, and/or declaratory relief as well the awarding of attorney's fees should a violation occur. This award can be significant and meaningful, and is appropriate for the nature of the violation.

Incompatible Addition to Existing Code Section
We understand the intent of AB 194 is to enhance the penalty for violating public comment period protections and does so by adding the "null and void" penalties that currently apply to other specified open meeting violations. However, "null and avoid" is incompatible with public comment violations for the following reasons and could further confuse this area of law.

1) "Null and Void" applies to real action. Public comments during an open meeting can address a laundry list of issues, both on and off the agenda. Members of the public can also address agenda items at that are listed as informational/discussion only or action items that require a vote. It is not clear how the court could "null and void" an action when there was simply no collective action taken, either because the agenda item was informational or the public comment addressed a matter not on the agenda.

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Sacramento, CA 95814
toll-free: 877.924.2732
t: 916.442.7887
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A proud California Special Districts Alliance partner

Special District Risk Management Authority
1112 I Street, Suite 300
Sacramento, CA 95814
toll-free: 800.537.7790
f: 916.231.1111

CSDA Finance Corporation
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
f: 916.442.7889

2) "Null and void" applies to actions of the entire legislative body. All of the current open meeting requirements under Government Code Section 54960.1 subject to "null and void" penalties reflect collective actions taken by a board. This includes holding a meeting by teleconference, voting by secret ballot, reporting actions during a closed session, adopting new taxes or assessments, and holding emergency meetings. However, AB 194 would add a violation that results from a single board member's action, specifically when the presiding chair or president limits criticism during the public comment period. This addition would create inconsistency within the current section.

Finally, AB 194 unintentionally offers a new means to stall the decision-making process of a local legislative body. A speaker could claim that their negative comments were blocked and as a result hold a key decision in suspense. This could cause immeasurable harm to contracting agreements, appointments, license applications or any other time-sensitive issue that is required to be acted on during an open session of a public meeting.

For these reasons, CSDA respectfully maintains our opposition to AB 194, as it is proposed to be amended and heard before the Assembly Local Government Committee on January 15, 2014. Please do not hesitate to contact me if you have any questions regarding our position at (916) 442-7887.

Sincerely,

Dorothy Holzem
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141

January 7, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos) – OPPOSE

Dear Assemblymember Achadjian:

The California Association of Sanitation Agencies (CASA) has taken an "Oppose" position on AB 194 (Campos), which relates to actions for violations of the Brown Act during meetings of local legislative bodies. CASA is a statewide association of municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, water recycling and biosolids management services to millions of Californians. All of our agencies are overseen by locally elected governing boards who comply with all existing laws relative to open meetings under the Brown Act.

AB 194 expands existing law to allow a District Attorney or interested party to seek judicial determination that an action taken by a legislative body is null and void if the legislative body violated certain provisions of the Act pertaining to public comment periods. CASA believes that under existing law, interested parties have sufficient means to seek remediation for violations of the Brown Act, including in cases of public comment, which is critical in nature, being limited by a legislative body. Expanding this section could have a significant impact on an individual agencies' flow of business, and limits the Board Chair's ability to manage the productive dialogue between the Board and interested parties during a public hearing. Finally, expanding this section could potentially incentivize disruptive behavior during public comment periods.

For these reasons, CASA must respectfully oppose AB 194. If you have any questions related to our position on this legislation, please feel free to contact me at (916) 448-2196.

Sincerely,

JESSICA GAUGER
CASA Lobbyist

CC: Committee Consultants
The Honorable Nora Campos

URBAN
COUNTIES
CAUCUS

URBAN COUNTIES CAUCUS
1100 K Street, Suite 101
Sacramento, CA 95814
(916) 327-7531

RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
1215 K Street, Suite 1650
Sacramento, CA 95814
(916) 447-4806

January 7, 2014

The Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: **Assembly Bill 194 (Campos) – OPPOSE**

Dear Assembly Member Campos:

On behalf of the thirty-four member counties of the Rural County Representatives of California (RCRC) and the twelve member counties of the Urban Counties Caucus (UCC), it is with regret that we inform you of our continued opposition to your Assembly Bill 194 which would negate any action taken by a local legislative body if that action was taken in accordance of curtailing public comment/public criticism associated with our state's open meeting laws (commonly referred to the Brown Act).

Under California's Brown Act, county boards of supervisors must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. This section of the Brown Act specifically references a prohibition of a legislative body from curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and provide comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. Two years ago, this area of law was strengthened with the enactment of SB 1003 (Yee) which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated. This serves as a strong and expensive disincentive to local public agencies towards violating the Brown Act.

We are troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed or public comment was not allowed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

We appreciate the time your staff has dedicated to discussions involving AB 194 as we explore possible revisions to the Brown Act and its public comment/public criticism provisions. Nevertheless, we remain convinced that current law provides members of the public plenty of options if they believe their 1st Amendment rights have been violated or their ability to offer comment/criticism was breached. For these reasons, we remain strongly opposed to AB 194.

If you have any questions or concerns regarding our position, please do not hesitate to contact Paul A. Smith of RCRC at 916-447-4806 and/or Jolena Voorhis of UCC at 916-327-7531.

Sincerely,

Paul A. Smith
Senior Legislative Advocate
RCRC

Jolena L. Voorhis
Executive Director
UCC

cc: Each Member and Consultant, of the Assembly Local Government Committee

CaliforniansAware

January 8, 2014

Honorable Nora Campos
California Assembly
State Capitol
Sacramento, CA
95814

RE: AB 194 -- SUPPORT

Dear Assembly Member Campos,

Californians Aware strongly supports your AB 194. We closely monitor press and individual reports of suspected violations of the Ralph M. Brown Act, and have noticed that too often the complaint deals with a denial of a citizen's statutory and constitutional right to address the legislative bodies of local agencies in their open and public meetings.

AB 194 is a welcome opportunity to protect the public's right to address its representatives in meaningful ways in the public forum.

Sincerely,

Terry Francke
General Counsel
Californians Aware

2218 Homewood Way • Carmichael, CA 95608 • Phone (916) 487-7000 • info@calaware.org

California Special
Districts Association
CSDA
Districts Stronger Together

January 3, 2014

The Honorable Nora Campos
California State Assembly
State Capitol Building,Room 3160
Sacramento, CA 95814

RE: **Assembly Bill 194 (Campos) – Notice of Opposition** [As proposed to be amended]

Dear Assembly Member Campos:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations, regrets to inform you of our continued opposition to your Assembly Bill 194, as proposed to be amended. CSDA fully supports and encourages public participation and engagement with local government agencies and elected officials. However, AB 194 would unnecessarily hinder special district boards' ability to conduct business on behalf of the millions of Californians who rely on them for core local services such as water, sanitation, fire protection, and healthcare.

We appreciate the opportunity to discuss our concerns with your office, as well as the proposed amendment to remove the misdemeanor penalty targeting the legislative body chair, as drafted in the introduced version of this bill. Unfortunately, the proposed amendment does not fully address our concerns, as outlined below.

Current Remedies are Sufficient and Appropriate
Specifically, AB 194 would create "null and void" penalties for violations of Government Code Section 54954.3, related to public comment periods. Current statute provides protections for public comment that is critical in nature, and prohibits a local legislative body from blocking such speech. Current statute also provides civil remedies for members of the public through mandamus, injunction, and/or declaratory relief as well the awarding of attorney's fees should a violation occur. This award can be significant and meaningful, and is appropriate for the nature of the violation.

Incompatible Addition to Existing Code Section
We understand the intent of AB 194 is to enhance the penalty for violating public comment period protections and does so by adding the "null and void" penalties that currently apply to other specified open meeting violations. However, "null and avoid" is incompatible with public comment violations for the following reasons and could further confuse this area of law.

1) "Null and Void" applies to real action. Public comments during an open meeting can address a laundry list of issues, both on and off the agenda. Members of the public can also address agenda items at that are listed as informational/discussion only or action items that require a vote. It is not clear how the court could "null and void" an action when there was simply no collective action taken, either because the agenda item was informational or the public comment addressed a matter not on the agenda.

California Special Districts Association
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toll-free: 877.924.2732
t: 916.442.7887
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www.csda.net

2) "Null and void" applies to actions of the entire legislative body. All of the current open meeting requirements under Government Code Section 54960.1 subject to "null and void" penalties reflect collective actions taken by a board. This includes holding a meeting by teleconference, voting by secret ballot, reporting actions during a closed session, adopting new taxes or assessments, and holding emergency meetings. However, AB 194 would add a violation that results from a single board member's action, specifically when the presiding chair or president limits criticism during the public comment period. This addition would create inconsistency within the current section.

Finally, AB 194 unintentionally offers a new means to stall the decision-making process of a local legislative body. A speaker could claim that their negative comments were blocked and as a result hold a key decision in suspense. This could cause immeasurable harm to contracting agreements, appointments, license applications or any other time-sensitive issue that is required to be acted on during an open session of a public meeting.

For these reasons, CSDA respectfully maintains our opposition to AB 194, as it is proposed to be amended and heard before the Assembly Local Government Committee on January 15, 2014. Please do not hesitate to contact me if you have any questions regarding our position at (916) 442-7887.

Sincerely,

Dorothy Holzem
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

CITY OF LAGUNA HILLS

City Council

March 28, 2014

Honorable Nora Campos
State Capitol, Room 3160
Sacramento, CA 94249

RE: AB 194 (Campos) Open Meetings: Actions for Violations-OPPOSE

Dear Assemblywoman Campos,

On behalf of the City of Laguna Hills, we are strongly opposed to AB 194 (Campos). The City is concerned this bill would create unintended consequences for local governments and stall their decision-making process. AB 194 would expand the authorization for a District Attorney or any interested party to seek a null and void determination for violations of Brown Act provisions that require public comment at public meetings.

The heart of null and void provisions of the Brown Act exists to address decisions made in secret and undisclosed manner to the public when remedies have been exhausted. In addition, current null and void provisions apply to real action only. The nature of the public comment section of city council meetings provides that members of the public can address issues that are not germane to the agenda. Members of the public may also address issues on the agenda, but that are related to informational or discussion action items. It is not clear how the Court would null and void an action when there has been no collective action taken.

In addition, null and void provisions apply in present form only to actions of the entire legislative body, reflecting collective actions taken by a city council, such as failure to properly notice a meeting or inappropriate decision making in closed session. AB 194 would set a bad precedent by allowing a violation from a single board member's action, specifically when the presiding chair may limit criticism or time allotments during public comment.

Furthermore, AB 194 has the potential to stall the decision-making process of a city council. A speaker could claim that their comments were blocked and as a result of a null and void determination hold a key decision in suspense. This could potentially stall time sensitive issues before the city council.

For these reasons, the City of Laguna Hills respectfully opposes AB 194.

Sincerely,

Andrew Blount
MAYOR

cc: Senate Governance and Finance Committee, Fax: (916) 322-0298
ACC-OC Board of Directors, Fax: (714) 953-1302

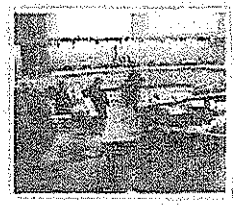
24035 El Toro Road • Laguna Hills, California 92653 • (949) 707-2610 • FAX (949) 707-2614
website: www.ci.laguna-hills.ca.us

The Left Hook

January 15, 2014 1 Subscribe

Shoring Up Your Right to Be Heard

by Assembly Member Nora Campos



The people's right to speak and be heard is a cornerstone of our democracy.

That right would be strengthened by my bill, AB 194, which was approved Wednesday by the Assembly Local Government Committee. The bill puts more teeth into the Brown Act with penalties that will make local agencies think twice about shutting out citizens.

I sponsored this bill to protect the public's right to fully participate in decisions made by local government. If passed, it will hold local elected officials accountable in a stronger way to the people they represent.

For 60 years, the Brown Act has helped ensure that the public can comment on matters that their city council, board of supervisors, water agency, etc. are debating.

However, despite the guarantees of the Brown Act, the public's voice is too often inappropriately silenced.

Under the Brown Act, agencies can place reasonable restrictions on the time, place and manner of public comment. But too often, they go too far and shut down people's comments.

And if there are complaints, local agencies can just dismiss them with a promise that it will not happen again – without having to actually allow the person whose voice was silenced to speak.

AB 194 allows the offending agency to correct its violation. For example, an agency can simply call another meeting and have the issue heard again.

If an agency fails to correct the violation, AB 194 allows an individual to take a complaint to a judge who could void the action taken by the agency.

The penalties in AB 194 are not new. There are already penalties in place for local agencies that fail to provide enough notice to the public on when hearings are scheduled, or for not conducting meetings openly.

AB 194 simply applies these existing remedies to instances where the public is wrongly silenced during otherwise open hearings.

AB 194 will now move to the Assembly floor. Stay tuned, I will keep you posted on its progress.

Posted in Government

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Amicus Gentry

Mayor Reed's most frequently and consistently uttered phrase during citizen comments at council meetings:
"Your time is up."

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January 2014

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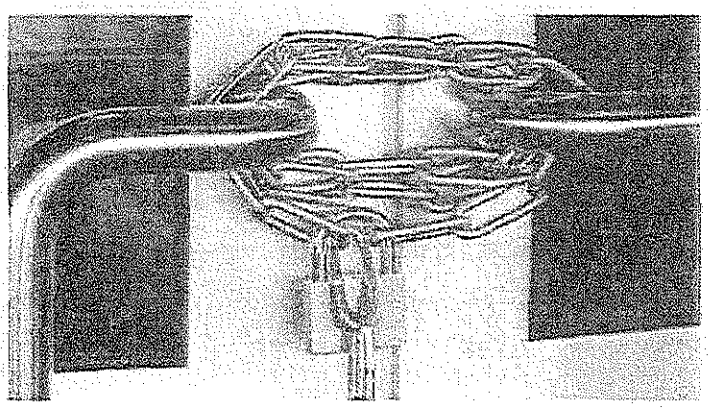
INGLEWOOD FLOUTS THE LAW: LOCKED DOORS, ELEVATORS KEEP CITIZENS FROM COUNCIL MEETING

Local Governments - Exclusive — 06 January 2014



Originally posted at City Watch LA.

By Randall Fleming.

The City Council Meeting slated for 10 a.m. today was held in a city hall behind locked doors and with elevators accessible only to city employees with an RFID card.

The prevention of citizens from attending a public meeting is in direct violation of California State Government Code § 54954.3 which states, "[The] public may comment on agenda items before or during consideration by legislative body." Owing to the mayor, James T. Butts, and city council not allowing residents to enter the building or, if they did gain access, to reach the 9th floor, this and other significant state laws were violated.

This reporter arrived at 9:58 a.m. to find all four entrances to Inglewood City Hall locked. A number of people were at each entrance. All were denied entry.

Around 10:04 a.m., an apparent city employee approached the main entrance at the east side and reluctantly allowed this journalist inside but denied access to others seeking entry. When told of the city council meeting scheduled for that morning, she said she was unaware of it.

"I don't know about it. But if there is, the elevators are probably locked too. If you can get up there, maybe you can see."

The elevators were locked. It was at that time that two more city employees entered city hall from the south side. One of them was Mr. John F. "Jack" Hoffman. (They had been seen a few minutes earlier walking to a vehicle parked beneath the nearby library, and had since re-entered city hall.) Both had city IDs. Hoffman used his card to provide access via the elevator to the 9th floor, which was accessed by this reporter at exactly 10:06 a.m.

Hoffman is a retired Personnel Director from the City of Glendale and a resident of Inglewood who lives on Fairview Boulevard.

On the 9th floor, the council chamber doors were open, the lights were on but no one was inside. It was at that time that District 2 Council Member Alex Padilla exited from behind the chambers and came down the hallway. He stopped, said hello and when asked about the council meeting said, "We just finished. We're going into closed session now."

Downstairs again, there was a brief conversation with City Clerk Yvonne Horton. Pleasantries were exchanged and then this reporter went outside to speak with Inglewood Management Employees Organization (IMEO) members who had gathered in the library parking lot. When told that the doors were locked, that the open portion of the council meeting had been executed in a matter of minutes, they departed together.

Incoming Inglewood City Attorney Kenneth P. Campos was informed of the situation as well as the violations of the California Ralph M. Brown Act that had occurred as a direct result of the public being prevented from attending the city council meeting of December 30, 2013.

Outgoing city attorney Cal P. Saunders, who has notified the city of his resignation as of 31 December 2103, apparently took the time to write a rare response. Despite evidence to the contrary, an unsigned response via Saunders' e-mail account stated that "[i]t was my understanding that the doors to City Hall were open and the 9th Floor was assessable by elevator before 10:00 a.m."

Saunders' e-mail response was cc'd to the assistant city manager/Chief Information Officer (CIO) Michael Falkow.

Inglewood Flouts the Law: Locked Doors, Elevators Keep Citizens from Council Meeting

Details: Written by Randall Fleming 07 Jan 2014

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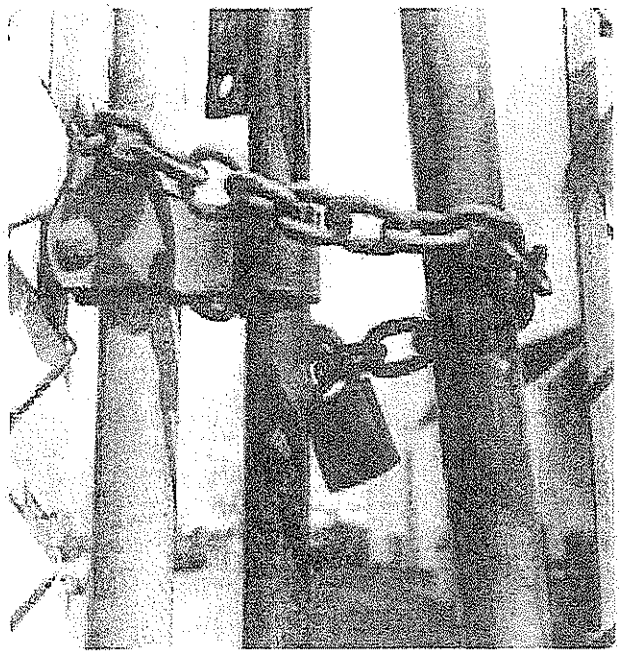

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Falkow is in charge of the video security footage collected by the City of Inglewood which is filmed at all four entrances as well as in all four elevators.

The mayor, Campos and city council members did not respond to requests for comment via e-mail.

(Randall Fleming is a veteran journalist and magazine publisher. He has worked at and for the New York Post, the Brooklyn Spectator and the Los Feliz Ledger. He is currently editor-in-chief at the Morningside Park Chronicle, a monthly newspaper based in Inglewood, CA and on-line at MorningsideParkChronicle.com. Views expressed and/or conclusions reached by Mr. Fleming are his and do not necessarily reflect those of CityWatch.) Photo credit: Randall Fleming.

-cw

CityWatch

Vol 12 Issue 2

Pub: Jan 7, 2014

latimes.com/local/la-me-dollar-lawsuit-20140224,0,5353164.story

latimes.com

Winners of free-speech suit against L.A. are awarded only $2

Two Venice Beach performers get $1 each for repeatedly being kicked out of L.A. council meetings.

By Emily Alpert Reyes

5:40 PM PST, February 23, 2014

Two men who were repeatedly kicked out of Los Angeles City Council meetings for violating public comment rules won part of a free-speech lawsuit against the city last year. But a jury recently awarded them only a few dollars for their trouble.

The meager awards are the latest turn in a long-running case that pitted the Venice Beach performers against council rules banning "personal, impertinent, unduly repetitive, slanderous or profane remarks."

Like many government bodies across the country, the council has often wrestled with how to regulate public comments and keep meetings orderly. Some politicians complain that L.A. council meetings have at times devolved into a "circus."

"We allow people to curse at the council. We allow them to wear dollhouses strapped to their heads. We aren't that tight on it," Councilman Paul Koretz said. "Yet we still have a constant battle" over what is allowed.

In August, a federal judge in Los Angeles ruled that the city had repeatedly run afoul of the 1st Amendment in enforcing its Rules of Decorum, cutting off or ejecting two activists from meetings dating from 2009. In several instances, the men were temporarily banned from speaking at city meetings.

In a separate action last week, a jury concluded that Matt Dowd and David "Zuma Dogg" Saltsburg — who once ran for mayor against Antonio Villaraigosa — had not proved that they suffered "actual injury" from the unconstitutional use of the meeting rules and granted them only $1 each in nominal damages.

"I'm just stunned and appalled that a jury of American citizens can think that banning someone from speaking in a public meeting … is not worth anything," Dowd said in a telephone interview from New Zealand, where he now lives. "The city — they feel like they got away with it — even though they lost."

The decision could still cost taxpayers: Civil rights attorney Stephen Rohde said he would seek to recover legal fees from the city but declined to estimate how much. He estimated that he and three other lawyers spent more than 1,500 hours among them on the case. The city has already paid more than $450,000 to outside attorneys to help handle the matter, according to a spokesman for City Atty. Mike Feuer.

Such cases "often are not necessarily about the money," Rohde said. "My hope is that the city will take the 1st Amendment seriously.... That will be the vindication for these plaintiffs."

The federal judge did not find that the city rules themselves violated the 1st Amendment right to freedom of speech, as Dowd and Saltsburg had argued. However, the judge warned that "because of its phrasing, it is easy to apply the Rule in an unconstitutional manner." His decision hinged on whether the rules were interpreted to require "an actual disruption," not just language that was "impertinent" or objectionable.

The judge found there was "an unconstitutional application" of the rules against Dowd and Saltsburg at a string of meetings. In one such case, Dowd complained that the council "president is pathetic and hopeless and is not doing a very good job and you need to get together and lose her." That prompted a city attorney to advise the council that Dowd shouldn't engage in personal attacks, according to the decision.

Dowd countered that he wasn't directly talking to the president, then used an expletive when complaining about rules governing public conduct along the Venice Beach boardwalk. The council dismissed Dowd from the meeting and voted to ban him from speaking at future meetings for 30 days.

The city argued Dowd was disruptive. But criticizing how the council president did her job "is political speech at the heart of the First Amendment," U.S. District Judge Dean D. Pregerson ruled. Profanity seems to be what ultimately spurred the council to ban Dowd, but profanity alone isn't reason to remove someone, the judge concluded. The council "cannot sacrifice political speech to a formula of civility," he wrote.

In the same decision, Pregerson ruled that the city could not ban the use of amplified sound in designated areas of the Venice Beach boardwalk but backed other restrictions on boardwalk performers and vendors — which spurred the performers' complaints against the city. Dowd, Saltsburg and other Venice performers who filed the lawsuit were also awarded $1 each in nominal damages related to the sound restrictions. The total payout was $10.

The Rules of Decorum haven't been altered since the court decision. Pregerson wrote that the city "would do well to consider revising the rules" to make it clear that nobody can be ejected before causing "an actual disruption."

Bardis Vakili, staff attorney for the American Civil Liberties Union of Southern California, said the wording in the existing Los Angeles rules could be used to chill criticism. "Nobody would ever accuse you of being 'impertinent' when you're praising the City Council," Vakili said. His group has challenged similar rules in Orange County.

City attorney spokesman Rob Wilcox said now that damages have been assessed in the case, city lawyers will evaluate the verdict and advise the council on whether any changes are needed.

For cities, "it's a balancing act," said Tracy Westen, chief executive of the nonprofit Center for Governmental Studies. "The City Council can probably censor people if they're off topic and dramatically wasting time, if they're so loud that it's disruptive. But they have to give them considerable latitude under the 1st Amendment to express their views.... It's very difficult to say, 'You can't talk.'"

emily.alpert@latimes.com

COUNTY OF LOS ANGELES
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(916) 441-7888 • Fax (916) 445-1424
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WILLIAM T FUJIOKA
Chief Executive Officer

ALAN FERNANDES
Chief Legislative Representative

January 14, 2014

JAN 07 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos), As Amended on January 6, 2014 – OPPOSE
Relating to the Brown Act
Set January 15, 2014 in Assembly Local Government Committee

Dear Assembly Member Achadjian:

The Los Angeles County Board of Supervisors opposes AB 194 (Campos).

The Ralph M. Brown Act (Brown Act) requires, with specified exceptions, that all meetings of a local legislative body be open and public, permitting all persons to attend and participate. The Brown Act allows local agencies to establish reasonable rules to manage and conduct public comment, determining the time, place, and manner in which restrictions for public comment are permissible.

AB 194 would expand the authorization of a district attorney or interested party to ask a court to determine that an act by a legislative body is null and void if that body violated the requirement to provide members of the public an opportunity for comment or criticism.

The Los Angeles County Executive Office of the Board has determined that AB 194 could significantly impact the Board of Supervisors and the Executive Office by encouraging members of the public to file court actions against the Board of Supervisors, as well as against the dozens of County commissions and committees. For example, pursuant to AB 194, a person could file a court action at any time he or she believed a legislative body failed to adopt reasonable regulations that allowed the public to directly address the legislative body on any item of public interest. As a result, a local body may be unable to move forward with critical and time-sensitive items until the court issued a decision.

For this reason, I respectively request your "NO vote on AB 194. If you have any questions, please contact me at (916) 441-7888.

Sincerely,

Stephen Kawamura
Legislative Representative

C: Assembly Member Nora Campos
Each Member and Consultant, Assembly Local Government Committee

AB 194 (Campos)
Protecting Public Participation in the Brown Act

Bill Summary:

Assembly Bill 194 is about the people's right to be heard and speak. It safeguards the right of the public to participate in local government decision making. It imposes specific penalties on any local agency that violates the public's right to be heard.

Background:

The 60-year old Brown Act requires that all meetings of a legislative body of a local agency be open and public and that all persons be permitted to attend and participate. The purpose of the Brown Act is to ensure that actions of local agencies and their deliberations are conducted openly and transparently.

The Brown Act guarantees that members of the public can address local legislative bodies. It allows bodies to enact reasonable regulations on the time, place, and manner in which individuals can make comments. However, the agencies are prohibited from preventing public criticism of their actions at meetings.

Problem:

The existing remedies for curtailing or violating the rights of people to comment at public meetings are insufficient.

The current course of action for an individual who feels their ability to comment during a meeting has been violated is to submit a "cease and desist" letter to the local agency within nine months of the alleged violation. The local agency has 30 days to respond. The local agency can simply issue an unconditional commitment that they will stop the violations in the future. Once that has occurred, the matter is closed leaving the public with no further recourse.

There is no requirement that the particular issue be brought up again so the public can be heard. The local agency, in essence, polices itself and there is no other review.

Legislative Solution:

AB 194 upholds the right of individuals to provide meaningful public comment to a local agency. It provides that if the public comment provisions of the Brown Act are violated then an individual can seek to have a judge render any action taken by the agency on that particular item null and void. Prior to such action, the agency would have an opportunity to cure or correct the alleged violation. For example, they could rehear the particular matter at a subsequent meeting and allow for public comment at that time.

This remedy currently applies to other violations of the Brown Act such as failure to properly notice a meeting or inappropriate decision making in closed session.

AB 194 will ensure the public has the tools necessary to hold governing agencies accountable when they violate the Brown Act.

Representing San Jose
www.asm.ca.gov/campos

Support:

American Civil Liberties Union
Californians Aware

Opposition:

Association of California School Administrators
Association of California Water Agencies
California Association of Clerks and Elections Officials
California Special Districts Association
California State Association of Counties
City of Camarillo
City of Thousand Oaks
County of Tulare
El Dorado Irrigation District
League of California Cities
Los Angeles County Board of Supervisors
Rural County Representatives of California
Sacramento County Board of Supervisors
Solano County Board of Supervisors
Urban Counties Caucus

For More Information:

Larry Sokol
Principal Assistant
Assembly Speaker pro Tempore Nora Campos
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CHAPTER 1:
IT IS THE PEOPLE'S BUSINESS

THE RIGHT OF ACCESS

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

> *"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."*[1]

Practice Tip:

The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

The Brown Act's other unchanged provision is a single sentence:

> *"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."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

BROAD COVERAGE

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common e-mail practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an Internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, personal digital assistants, or cellular telephones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Practice Tip:

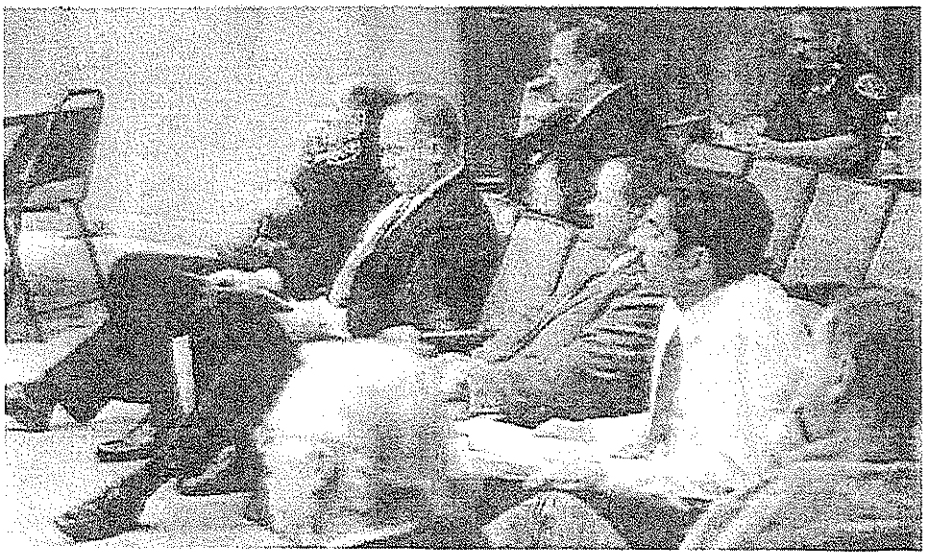
Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest.

NARROW EXEMPTIONS

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body don't discuss issues related to their local agency's business. Meetings of temporary advisory committees—as distinguished from standing committees—made up solely of less than a quorum of a legislative body are not subject to the Brown Act.



The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires—with certain specific exceptions to protect the community and preserve individual rights—that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PUBLIC PARTICIPATION IN MEETINGS

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

CONTROVERSY

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately—such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business—the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises—are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

BEYOND THE LAW—GOOD BUSINESS PRACTICES

Practice Tip:

Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney's fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act doesn't provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

ANGEL LAW

FOR IMMEDIATE RELEASE

Contacts: Frank P. Angel (fangel@angellaw.com; 310-314-6433 or 310-924-1416)
Jessica Cheng (jcheng@angellaw.com; 310-314-6433)

November 1, 2013

CITY COUNCIL FAILS IN ATTEMPT TO DERAIL MALIBU TOWNSHIP COUNCIL'S BROWN ACT LAWSUIT

Los Angeles -- The Los Angeles County Superior Court (Honorable James C. Chalfant, Judge Presiding) yesterday rejected the Malibu City Council's bid to have the Malibu Township Council's Brown Act lawsuit thrown out. In a detailed, 11-page decision, the Court denied a motion by the City Attorney to dismiss the first cause of action in MTC's lawsuit against the City Council. MTC's first cause of action seeks a writ ordering the City Council to nullify its controversial actions to move forward with a proposal to swap City-owned Charmlee Wilderness Park for a portion of Malibu Bluffs Park now owned by the State of California. MTC's lawsuit presses claims under both the Brown Act and the California Public Records Act.

In December 2012, Mayor Joan House and Councilman Lou La Monte secretly negotiated the parkland swap with the Santa Monica Mountains Conservancy's Executive Director, Joe Edmiston. SMMC currently manages the 83 acres of Bluffs Park it would cede to the City in exchange for 535-acre Charmlee Wilderness Park. Before facing major public controversy and running into legal trouble, the SMMC and City officials had planned to finalize the deal by January 28, 2013.

The City Attorney argued that an April 8, 2013 decision by the City Council to rescind its January 14, 2013 decision to move forward with the swap effectively cured any alleged violations of the Brown Act's open meeting requirements, and that therefore MTC's Brown Act claims should be dismissed. The court squarely rejected this argument.

"The fact that on April 8, ten minutes after rescinding its January 14 decision, the council fully reapproved that same decision was not lost on the Court," said Frank P. Angel, MTC's lead attorney. "We had warned the City Council on April 8 that its so-called 'cure' was a sham cure that nobody will fall for." The Court made clear that the Brown Act requires more than simply notice of a meeting and the opportunity for the public to be heard; it requires local elected officials to discuss, deliberate *and* vote in the open on agenda items. They can't split fact-finding, discussion or deliberation between private and public meetings. "A major objective of the Brown Act is to facilitate public participation in all phases of local government decision-making and to curb misuse of democratic process by secret legislation of public bodies," wrote Judge Chalfant.

Noting that a majority of council members may not circumvent the Brown Act's open meeting provisions by using intermediaries or emails to discuss, deliberate or act on business within their subject matter jurisdiction, the Court reasoned:

> "[T]he City is fighting the ultimate facts [stated in MTC's pleading], which alleges that the City Attorney's pre-Christmas brief[ing] informed Sibert, Rosenthal and Peak that House and La Monte favored swapping the parkland. Rosenthal's December 24 email [to House and La Monte] expressed her own enthusiasm for the swap. Contrary to the City's argument, this email, made after negotiations with SMMC's full legal team, and after Rosenthal saw the City Attorney's report on the negotiations, can be construed as stating her favorable position on the swap. As three Councilpersons supported the swap, this can be construed as a collective decision by the majority of Councilpersons."

The City Council's failed attempt to defeat MTC's Brown Act claims was made in the form of a so-called motion for judgment on the pleadings. By this procedure, the court considers whether the plaintiff's complaint states facts entitling the plaintiff to legal relief, assuming the facts alleged will be established. In light of its ruling on MTC's main Brown Act cause of action, the Court dismissed ancillary Brown Act claims by MTC for declaratory and injunctive relief, finding them "duplicative of the first cause of action."

The trial is expected to take place in mid-2014. The Court will schedule the trial date in December and, at that time, will also decide on a protocol for future discovery -- evidence gathering to be carried out following an injunction, issued in June, which ordered the members of the City Council and unelected City officials to refrain from destroying evidence, including emails and other electronically stored information.

Oral argument was presented by City Attorney Christi Hogin on behalf of the City Council, and by Angel Law attorneys Frank P. Angel and Jessica Cheng on behalf of MTC. Angel Law is a Santa Monica-based law firm formed in 1993, specializing in environmental, land use, election and sunshine (good government) laws. The Brown Act and the California Public Records Act are California's main good government laws. They allow citizens to apply for the courts' help in ensuring that local government discussions of public business are conducted in the open, and that local officials' writings regarding the conduct of public business are subject to public scrutiny.

Malibu Township Council v. City Council of the City of Malibu, et al.
BS 142420
10-31-2013, 9:30 am.
D 85 LASC

Tentative decision on motion for judgment on the pleadings: denied as to first cause of action, granted as to second and third causes of action

Respondents City Council of the City of Malibu, City Councilmembers Joan House, Lou LaMonte, Skylar Peak, Laura Zahn Rosenthal and John Sibert, and Real Party-in-Interest City of Malibu (collectively, "City") move for judgment on the pleadings as to the three causes of action asserted in the Second Amended Petition ("SAP"). The court has read and considered the moving papers,[1] opposition, and reply, and renders the following tentative decision.

A. The SAP's Allegations

Petitioner Malibu Township Council, Inc. ("MTC") commenced this proceeding against the Malibu City Council ("City Council") on April 10, 2013, and filed the SAP, the operative pleading, on July 26, 2013. The SAP asserts causes of action for writ of mandate, declaratory relief, and injunctive relief, all under the Brown Act, Govt. Code sections 54960, 54960.1. Petitioner seeks to enforce its rights under the Brown Act (Govt Code §54950 *et seq.*), the California Public Records Act ("CPRA"), and Article 1, Section 3 of the California Constitution.

The SAP alleges in pertinent part as follows. The City Council has five members: Joan House ("House"), Lou LaMonte ("LaMonte"), Skylar Peak ("Peak"), Laura Zahn Rosenthal ("Rosenthal"), and John Silbert ("Silbert"). SAP, ¶15.

The action concerns a proposed swap of public parklands by the City with the Santa Monica Mountains Conservancy ("SMMC"). The swap would transfer ownership and control to the SMMC of the 535-acre Charmlee Wilderness Park ("Charmlee"), and the City would receive in exchange 83 acres of the Malibu Bluffs Park ("Malibu Bluffs"). SAP, ¶'s 1-2.

The City currently owns 10 acres of Malibu Bluffs, which it acquired from the State in 2006. The State acquired Malibu Bluffs with bond moneys which specified that it be held in the state park system to preserve, protect, and where possible, restore coastal resources for the benefit of all the people of California and to present and future generations of persons of all income levels, ages, and social groups. SAP, ¶2.

Through the proposed swap, the City seeks to gain control over the state-owned Malibu Bluffs to develop ballfields and other facilities to benefit local programs run by private Malibu social groups. Ibid. Charmlee is subject to deed restrictions which require that it be maintained for passive public recreation and coastal habitat conservation purposes, and ballfields are expressly prohibited. No ballfields currently exist in the Malibu Bluffs either, and development of them may not be feasible because the Malibu Local Coastal Program ("LCP") designates most of the Malibu Bluffs as environmentally sensitive habitat area ("ESHA"). SAP, ¶3.

In the Fall 2012, Councilwoman House approached then Mayor LaMonte with her idea of

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[1]The moving papers actually seek judgment on the pleadings for the First Amended Petition and Complaint, not the SAP. The City has filed a reminder that the court permitted the SAP to be filed on the condition that it would not affect the motion for judgment on the pleadings. On August 13, 2013, the court continued the hearing on the motion to the instant date, deeming it to apply to the SAP.

the parkland swap. SAP, ¶22. The two of them discussed the matter and agreed it was worth pursuing. Ibid.

On December 13, 2012, City Councilmembers House and Monte met with Joe T. Edmiston ("Edmiston"), Executive Director of SMMC. Edmiston expressed interest, but wanted the City and SMMC to simultaneously settle a lawsuit involving a dispute over SMMC's use of property in Ramirez Canyon. This meeting resulted in a framework for a comprehensive solution to many of the issues between the City and SMMC. SAP, ¶4, Ex.1[2].

The following week, on December 20, 2012, SMMC's full legal team, comprised of attorneys from the California Attorney General's Office, two outside law firms and MRCA staff counsel, met with the City's negotiating team, which included City Attorney Christi Hogin ("Hogin") and City Manager Jim Thorsen ("Thorsen"), to hammer out the details of the comprehensive deal framework that had been negotiated with Edmiston. SAP, ¶26.

The next day, December 21, Edmiston sent an email to his governing boards about the success of the negotiations. Petitioner is informed and believes that this email was forwarded to Hogin and Councilman Sibert, and that Sibert had additional communications with Edmiston's colleague. SAP, ¶27.

Also before Christmas 2012, Councilmember Rosenthal emailed both House and LaMonte, commending them for their "talent for negotiation" and the "brilliant idea" of putting Charmlee on the table for a proposed swap. She concluded that she was "blessed to have you as colleagues and friends." SAP, ¶'s 5, 28. This secret concurrence violated the Brown Act. Ibid.

Also before Christmas, City Attorney Hogin provided the City Council with a written briefing about what had transpired in the negotiation, including the position of House and LaMonte favoring the swap. This sharing of information with three non-negotiating members of the City Council violated the Brown Act. SAP, ¶6.

On January 4, 2013, the City posted on its website the agenda of the regular City Council meeting of January 14, 2013. Agenda Item 7.B read:

> "Proposal to Swap Charmlee Wilderness Park for the ≈83 acres of Bluffs Park Owned by the State and Operated by the [SMMC/MRCA] and Settle SMMC/MRCA v. City Malibu, Los Angeles County Superior Court Case No. SC092212 (Mayor LaMonte and Mayor Pro Tem House).
> Staff recommendation: Direct the City Attorney to negotiate agreements and implementing documents to effect land swap resulting in complete city control over all 93 acres of Bluffs Park and reach resolution in the lawsuit over the uses in Ramirez Park." (SAP, ¶30).

Item 7.B was discussed in a December 26, 2012 six-page staff report prepared by the City

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[2]Petitioner is informed and believes that three days earlier, Monday, December 10, 2012, the upcoming meeting between Edmiston, House, and LaMonte to discuss the parkland swap came up in a closed session of the City Council which occurred to discuss a final settlement of a lawsuit by the City against the Coastal Commission in which SMMC was the real party-in-interest. SAP, ¶23.

Attorney. Ibid.

At the January 14, 2013 meeting, the City Council heard a staff report from the City Attorney followed by public testimony from Petitioner MTC and other speakers who objected to the swap. SAP, ¶32. Councilmembers House and LaMonte acknowledged that they had discussed the swap with the City Attorney. SAP, ¶33. Councilmember Sibert acknowledged that he knew about the meeting to negotiate the swap, but did not know the details. SAP, ¶34. In fact, he had received the City Attorney's pre-Christmas written briefing, Edmiston's email, and had discussed the swap with Councilmember Rosenthal. SAP, ¶34. The City Council took action to direct the City Attorney to negotiate the final swap agreement with the conditions that the Bluffs Park property be able to accommodate ball fields and that fire safety measures continue to apply to Charmlee camping activity. SAP, ¶35.

On March 8, 2013, Petitioner MTC submitted a letter to the City Council, citing both direct and indirect evidence that a majority of the members of the Council had acted in violation of their Brown Act duty for open meetings concerning the Parkland Swap. SAP, ¶37, Ex. 2. Pursuant to Govt. Code section 54960.1(b) and (c)(1), MTC made a written demand of the City Council to cure and correct all actions taken in violation of the Brown Act concerning the Swap. Ibid.

On March 13, 2013, City Attorney Hogin prepared a staff report to the City Council in which she recommended that the Council reject any cure or correction, also revealing that she had briefed the Council members "in writing ... just before Christmas, as is permitted by the Brown Act." The City Attorney did not deny that this pre-Christmas written briefing communicated to Councilmembers Peak, Rosenthal, and Sibert the "pivotal fact" that the parkland swap proposal originated with Councilwoman House, and was put forth by Councilmembers House and LaMonte. SAP, ¶38.

At the March 25, 2013 City Council meeting, only three Councilmembers were physically present. Councilmember Sibert was on vacation in Mexico but participated via teleconference. MTC's legal counsel urged the City Council to accept MTC's cure-and-correct demand, but the council members voted 4-0 to reject it. SAP, ¶39.

In a report dated April 1, 2013, City Attorney Hogin recommended the Council reconsider its response of March 25 to MTC's cure-and-correct demand and now advised that the Council rescind its action of January 14 directing the City Attorney to negotiate agreements and implementing documents to effect the Swap, and then reapprove it as part of the same agenda item, with the goal "to dissuade MTC from filing expensive, distracting and divisive litigation." SAP, ¶43.

On April 8, 2013, MTC representatives appeared before the City Council to protest the Council's anticipated action adopting the City Attorney's April 1 recommendation, which they described as a "sham cure" that did nothing to let the sun shine on the Council's challenged actions on the Swap. The City Council deferred to the City Attorney and voted to rescind its January 14 action and its March 25 rejection of MTC's demand to cure and correct and then, minutes later, reapproved the January 14 action it had just rescinded. The only difference was that the reapproved action now described the swap as a "proposed" swap, and stated that "[t]he City Council will consider proposals generated from this direction at future Council Meetings." SAP, ¶46.

On April 9 and 11, 2013, MTC wrote to the City Council, again protesting the Council's April 8 decision and reiterating its demand that the Council, in good faith, correct and cure its Brown Act violations in regards to the secret December 2012 swap negotiation and its support for the swap prior to the open meeting of January 14, 2013. SAP, ¶47.

Petitioner MTC alleges that the City Council met secretly in private to agree upon a plan for the swap, in violation of the Brown Act, noting that the Brown Act prohibits members of legislative bodies from doing in successive steps what they cannot do in one step: "serial meetings," which typically occur in "hub-and-spoke" or "daisy-chain" manner.

To correct and cure the Brown Act violations, Petitioner requests that the City Council be directed to:

> 1. Rescind the action taken on January 14, 2013 directing staff to negotiate an agreement for future consideration;
> 2. Direct the City Manager, City Attorney and all staff to suspend all work or other efforts related to a parkland swap proposal, including negotiations with the MRCA;
> 3. Preserve and make available for inspection certain records regarding the parkland swap proposal;
> 4. Refrain from placing any parkland swap proposal on any future council agenda until the City has made all requested records available along with other, additional records;
> 5. Consider any future parkland swap de novo after "timely public notice and meaningful opportunity for informed comment by the public"; and
> 6. Assign staff work on the proposed swap in a specified manner and schedule any new swap agenda item "by majority vote at an open public meeting, after including the item on the posted agenda of that meeting, to have the matter placed on a future agenda for council consideration."

Petitioner MTC also seeks the disclosure under the CPRA of all swap-related public records including: (a) all emails and text messages sent or received by Councilpersons LaMonte, House, Sibert and City Manager Thorsen, including any such writings pertaining to the lobbying of state elected or agency officials; (b) all briefing memos, reports, notes or letters prepared or received by Mayor LaMonte, Councilpersons House or Sibert, or City Manager Thorsen regarding the swap negotiation or the lobbying of any state elected or agency official; and (c) all records of expenditures of public funds incurred in connection with the swap.

B. Applicable Law

Like demurrers, motions for judgment on the pleadings are permitted in mandamus proceedings. CCP §§1108, 1109. Where the pleadings are defective, the defect may be raised by demurrer or motion to strike or by motion for judgment on the pleadings. CCP §438(b)(1); Coyne v. Krempels, (1950) 36 Cal.2d 257. A motion for judgment on the pleadings has the same function as a general demurrer, but is made after the time for demurrer has expired. Weil & Brown, Civil Proceedings Before Trial, ¶7:275, 7-78 (1998). The rules governing demurrers

apply to motions for judgment on the pleadings except as provided by CCP section 438. Cloud v. Northrop Grumman Corp., (1998) 67 Cal.App.4th 995, 999; Lance Camper Mfg. Corp. v. Republic Indemnity Co. of America, (1996) 44 Cal.App.4th 194, 198. A motion by defendant can be made on the ground that (1) the court lacks jurisdiction of the subject of one or more of the causes of action alleged, or (2) the complaint (or any cause of action) does not state facts sufficient to state a cause of action. CCP §438(c). Except with leave of court, a motion for judgment on the pleadings cannot be made after entry of a pretrial conference order (CCP §575) or 30 days before the initial trial date, whichever is later. CCP §438(e).

Both a demurrer and a motion for judgment on the pleadings accept as true all material factual allegations of the challenged pleading, unless contrary to law or to facts of which a court may take judicial notice. The sole issue is whether the complaint, as it stands, states a cause of action as a matter of law. Mechanical Contractors Assn. v. Greater Bay Area Assn., (1998) 66 Cal.App.4th 672, 677; Edwards v. Centex Real Estate Corp., (1997) 53 Cal.App.4th 15, 27. On a motion for judgment on the pleadings a court may take judicial notice of something that cannot reasonably be controverted, even if it negates an express allegation of the pleading. Columbia Casualty Co. v. Northwestern Nat. Ins. Co., (1991) 231 Cal.App.3d 457. Evans v. California Trailer Court, Inc., (1994)28 Cal.App.4th 540, 549.

In the case of either a demurrer or a motion for judgment on the pleadings, leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. Virginia G. v. ABC Unified School Dist., (1993) 15 Cal.App.4th 1848.

C. The Brown Act

The Brown Act governs open meetings for local agencies, and is codified at Govt. Code[3] sections 54950 *et seq.* The City is a local agency under the Act. §54951.

The purpose of the Brown Act is to ensure the public's right to attend public meetings, to facilitate public participation in all phases of local government decision-making, and to curb misuse of the democratic process by secret legislation of public bodies. Chaffee v. San Francisco Library Commission, (2004) 115 Cal.App.4th 461. A major objective of the Brown Act is to facilitate public participation in all phases of local government decision-making and to curb misuse of democratic process by secret legislation by public bodies. Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs., (1968) 263 Cal.App.2d 41, 50. The Brown Act "is a remedial statute that must be construed liberally so as to accomplish its purpose." Shapiro v. Board of Directors, (2005) 134 Cal.App.4th 170, 181, citing Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist., (2001) 87 Cal.App.4th 862, 869.

To implement these legislative purposes, section 54953 provides for open meetings: "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 by this chapter." Los Angeles Times Communications v. Los Angeles County Board of Supervisors, (2003) 112 Cal.App.4th 1313, 1321.

Toward this same end, section 54952.2(b)(1) provides: "A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of

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[3]All further statutory references are to the Government Code unless otherwise stated.

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." Wolfe v. City of Fremont, (2006) 144 Cal.App.4th 533, 541.

At least 72 hours before a regular meeting, the legislative body of the local agency 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 the public. No action or discussion shall be taken on any item not appearing on the posted agenda. §54954.2(a).

An exception to the rule that no action can be taken on an item not on the agenda exists, and the legislative body may take action, if (1) the majority determines that the matter is an emergency as defined in section 54956.5, (2) upon a two-thirds vote of the body or a unanimous vote of members present, there is a need for immediate action based on a matter that came to the local agency's attention after the regular meeting agenda was posted, or (3) the item was posted for a prior meeting of the legislative body not more than five days earlier and the matter was continued. §54954.2(b).

The legislative body of a local agency may also call a special meeting. The presiding officer or a majority of its members may call a special meeting by delivering written notice to local newspapers of general circulation, radio, or television requesting such notice within 24 hours of the meeting. The notice shall specify the time and place of the special meeting and the business to be transacted or discussed. The word "specify" means "to name or state explicitly or in detail." Thus, the notice is required to describe the business to be transacted in the same manner as required by section 54954.2 for regular meetings. Moreno v. City of King, (2005) 127 Cal.App.4th 17, 26-27 (agenda item listing "Public Employee (employment contract)" did not provide notice that employee might be dismissed). The 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. No other business shall he considered at the special meeting. §54956.

To ensure a right of public comment, members of the public shall he given an opportunity at a regular meeting to directly address the legislative body on any item of interest to the public within the subject matter of the jurisdiction of the legislative body, before or during the legislative body's consideration of the item, and at special meetings on any item that is described in the notice for the meeting, before or during the consideration of that item. §54954.3 (a).

A person may file suit to determine whether a local legislative body has complied with the Brown Act and its action should be deemed null and void. §54960.1(a). To state a cause of action, a complaint must allege (1) that the local agency's legislative body violated one or more Brown Act provisions, (2) the local legislative body took action in connection with the violation, and (3) the plaintiff made a timely demand of the legislative body to correct or cure the action before filing suit. Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109, 1116-17. "If the legislative body cures or corrects the alleged violation of the Brown Act, the action shall be dismissed and such cure or correction shall not be construed as evidence of a violation of the Brown Act." §54960.1(e),(f). Id. at 1117.

D. Analysis[4]

The City seeks judgment on the pleadings for the SAP's Brown Act claims (first, second, and third causes of action), but not its CPRA claims (fourth, fifth, and sixth causes of action).

1. First Cause of Action for Writ of Mandate (Brown Act)

a. Violation

The SAP alleges that the City Council violated the open meeting requirements of sections 54952.2 and 54953 by communicating in secret through two or more serial meetings, and agreeing on a plan for a proposed swap of public parklands with SMMC. SAP, ¶55. The SAP does not identify the specific action taken by the City Council in violation of section 54952.2, but the challenged actions presumably occurred prior to the January 14, 2013 City Council meeting.[5] Thus, the SAP alleges that, whether through daisy chaining or serial "hub and spoke" meetings, a majority of the City Council improperly collectively concurred on a favorable decision toward the parkland swap. SAP, ¶55.

Section 54952.2(b)(1) prohibits a majority of the City Council from discussing, deliberating or taking action on City Council business outside of an open meeting, whether done directly or through intermediaries, and whether in a single or series of communications. While a City Councilperson may engage in separate conversation with a City employee about City Council business, the employee may not communicate to the City Councilmember the comments or position of other City Councilmembers. §54952.2(b)(2).

The City argues that no violation of the Brown Act occurred. Mandamus is available for a judicial determination that "an action taken" by a City Council is null and void. §54960.1(a). Absent an action taken by a majority, no voidable Brown Act violation occurs. Ibid; Centinela Hospital Assn.v. City of Ingelwood, (1990) 225 Cal.App.3d 1586, 1597-99). The term "action taken" means a collective decision by a majority of the City Council's members. §54952.6. The City argues that the City Council did not take an action in connection with the parkland swap until January 14. Mot. at 10.

The City asserts that while Councilmembers House and LaMonte negotiated the parkland swap, and the other three City Councilmembers were informed of this fact by the City Attorney's written report, the SAP does not allege that the other Councilmembers were expressly informed that House and LaMonte took positions "in favor of swapping Charmlee for Malibu Bluffs." Rather, the SAP assumes that House and LaMonte took this favorable position, which was communicated to the other three Councilmembers only by implication. At the time the City Attorney briefed the other City Councilmembers, the parkland swap was no more than a concept. The City argues that it is irresponsible to conclude that a person who has an idea necessarily is

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[4]Petitioner's asks the court to judicially notice two categories of documents: (1) non-California case law (Exs. 1-3) and portions of the legislative history for the 2008 amendments to the Brown Act (Exs. 4-6). The requests are granted. Ev. Code §§ 452(a), b).

[5]The March 8, 2013 demand letter was timely for any Brown Act violation that occurred outside of open session on or after December 8, 2012, but it was untimely for any violation that occurred in open session on January 14, 2013. *See* §54960.1(c)(1).

committed to it once it is fully developed. Mot. at 11. Indeed, LaMonte's comments at the January 14 hearing show that he, in fact, was not committed to the swap unless Malibu Bluffs could be used for new ball fields. Ibid.

The City is fighting the SAP, the allegations of which must be accepted as true. According to the SAP, the other three Councilmembers were informed by the City Attorney in writing about the positions of House and LaMonte favoring the swap. SAP, ¶6. It remains to be seen whether that writing, which is not attached to the SAP, actually did so or whether the context of other facts shows that the position of House and LaMonte was communicated to the other Councilmembers.

The City argues that, even if House and LaMonte were committed to the swap and this fact was communicated to the other Councilmembers, no action was taken, and no collective decision was made, by a majority of the City Council in violation of section 54952.2(b)(1). According to the City, Rosenthal's pre-Christmas email discussing the talent of House and LaMonte and their brilliant idea of a swap does not convey a commitment or promise to favorably view the swap when it came before the City Council. Siberet knew about the negotiation by House and LaMonte, but he had not discussed it with anyone and did not know the details. The City concludes that a majority of the City Council did not make a collective decision or commitment about the swap.

Again, the City is fighting the ultimate facts in the SAP, which alleges that the City Attorney's pre-Christmas brief informed Sibert, Rosenthal, and Peak that House and LaMonte favored swapping the parkland. Rosenthal's December 24 email expressed her own enthusiasm for the swap. Contrary to the City's argument, this email, made after negotiations with SMMC's full legal team, and after Rosenthal saw the City Attorney's report on the negotiations, can be construed as stating her favorable position on the swap. As three Councilpersons supported the swap, this can be viewed as a collective decision by the majority of Councilpersons.

It is also true that a City employee cannot brief one City Councilmember on the comments or position of another City Councilmember. §54952.2(b)(2). The City Attorney pre-Christmas report to other City Councilmembers concerning the actions of House and LaMonte arguably violated this requirement. While a violation of section 54952.2(b)(2) by itself is not subject to mandamus under section 54960.1(a) unless it results in "action taken," it is evidence of an action taken before January 14.

The City also suggests that because the swap had not been finalized, and was "preliminary" and "yet-to-be defined," there was no commitment to action until January 14, 2013. Mot. at 12.

As Petitioner argues, the swap need not be final in order for the City Council to violate section 54952.2(b)(1). The SAP alleges that the City Council members discussed, deliberated, and took action in violation of section 54952.2(b)(1). The discussion or deliberation allegedly took place before January 14, and the "action" within the meaning of section 54952.6 was a collective commitment to the basic swap, and to send the matter to the City Attorney for a final swap agreement with the conditions that the Bluffs Park property be able to accommodate ball

fields and that fire safety measures continue to apply to Charmlee camping activity. SAP, ¶35.[6]

The SAP adequately pleads a Brown Act violation through action taken before January 14 which would be subject to mandamus.[7]

b. The Purported Cure

Since the SAP adequately pleads a Brown Act violation, the issue becomes whether the City Council successfully corrected or cured the problem by the actions taken at the April 8, 2013 City Council meeting.

During any mandamus case to set aside a legislative body's action as void under section 54960.1(a), if the court determines, pursuant to a showing by the legislative body that an action in violation of *inter alia* section 54953 has been cured or corrected by a subsequent action of the legislative body, the action shall be dismissed with prejudice.

As the SAP acknowledges, on April 1, 2013, City Attorney Hogin recommended in a report that the City Council reconsider its denial of MTC's cure-and-correct demand, advising that the City Council rescind its action of January 14 directing the City Attorney to negotiate the final swap agreement, and then reapprove it as part of the same agenda item, with the goal "to dissuade MTC from filing expensive, distracting and divisive litigation." SAP, ¶43.

The public had timely notice of the proposed rescission, set for the City Council's April 8 meeting. SAP, ¶'s 42, 45. At the hearing, MTC representatives appeared before the City Council protesting that the rescission was a "sham cure" that did nothing to let the sun shine on the Council's challenged actions on the swap. Other members of the public had the opportunity to be heard. SAP, ¶45. The City Council voted to rescind its January 14 action, and minutes later reapproved the January 14 action with the only difference that the reapproved action now described the swap as a "proposed" swap, and stated that "[t]he City Council will consider proposals generated from this direction at future Council Meetings." SAP, ¶46.

The rescission and reconsideration may be significant. Brown Act violations require prejudice, and no prejudice can exist where the legislative body cures the failure. *See* Bell v. Vista Unified School District, (2000) 82 Cal.App.4th 672, 684. Where the legislative body deliberates on an item at a publicly noticed hearing where the public has an opportunity to address the legislative body, the Brown Act's purpose of public attendance and participation is fulfilled. *See* Chaffee v. San Francisco Library Commission, *supra*, 115 Cal.App.4th at 461.

Petitioner is critical of the City's effort to dispose of this case at the pleading stage based on the rescission and reapproval of the proposed swap. They contend that section 54960.1(a) requires a showing by the legislative body, and confers broad discretion on the court sitting in equity to evaluate the adequacy of the cure. Petitioner contends that the City never effectively rescinded its prior action, and its reconsideration of the issues were not substantial. Petitioner argues that the court must hear the evidence and formulate a remedy that will ensure an adequate

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[6]Again, to the extent that this collective commitment occurred before January 14, Petitioner's demand letter was timely.

[7]Under Petitioner's theory, the January 14 action simply memorialized the previous collective decision to approve the swap.

reappraisal. Opp. at 14. Petitioner believes this remedy should include (1) rescission of the April 8 reapproval, (2) a moratorium on swap-related work, (3) the preservation and production of swap-related records,[8] and (4) City Council consideration of any renewed swap proposal *de novo* and in a two-step public notification process. *See* Mot. at 8.

There is some reason to believe that the City's remedy was adequate. As the City argues, a Brown Act violation is cured when the action is set aside through rescission. The City Council did rescind its action, however briefly, and the public had an opportunity to oppose the parkland swap at a time when no approval existed. Moreover, nothing in the Brown Act provides that a "reset button" must be pressed such that the legislative body must start all over, or that the remedy must await disclosure of records an opposing party might wish to use as ammunition against the legislative action.[9]

The nature of the alleged violation also is significant in crafting a remedy. As alleged in the SAP, the City Council is guilty of a Brown Act violation because two Councilpersons had the "brilliant" idea of swapping parkland with SMMC because the City cannot build ball parks on its parkland, Charmlee, but could do so on the Malibu Bluffs Park owned by SMMC. Those Councilpersons became involved in the swap negotiation, and then at least a third Councilperson committed to the swap before any public participation occurred. There is nothing "back door," nefarious, or in bad faith about these facts, even if they show a violation of law.

On the other hand, bad faith is not the criterion. In Page v. Mira Costa Community College District, ("Page") (2009) 180 Cal.App.4th 471, the trustees of a community college district negotiated a settlement with a college president through a retired judge in which the board members met with the judge in a closed meeting in numbers less than a quorum to negotiate. Id. at 481. The court held that this practice *inter alia* violated section 54952.2's prohibition from using intermediaries to exchange facts so as to reach a "collective concurrence" outside the public forum. Id. at 503. The fact that the district subsequently reconsidered and approved the settlement in a public meeting did not cure the impermissible information gathering in a closed meeting which was outside the Brown Act's pending litigation exception. Id. at 505. The Page court cited Boyle v. City of Redondo Beach, (1999) 70 Cal.App.4th 1109, 1117, as a case in which a city council meaningfully reconsidered it initial improper action by rescinding the action taken at the meeting noticed in violation of the Brown Act. Ibid.[10]

Based on Page, meaningful reconsideration is required. The court could make the

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[8]Presumably, production of these records may provide additional insight into what agreement or other actions the City Council may have taken, if any, in connection with the swap.

[9]The City Council's agreement to consider future proposals suggests ongoing visibility of the process and ongoing opportunity for the public to participate.

[10]Boyle concerned a city council agenda for a special meeting which did not include litigation which the city council then discussed at the meeting. 70 Cal.App.4th at 1117-18. However, the city council did no more than confer with staff about the litigation, and did not take any action with respect to it. Moreover, in the face of a demand to cure, the city council rescinded all action taken at the meeting in relation to the litigation. Id. at 1118.

determination of cure in a simple case (such as Boyle), but not here where the allegation is that there was a secret, collective commitment to the basic swap of parkland without public input until it was too late. The evaluation of whether the April 8 rescission, public discussion, and readoption was a meaningful cure is a factual inquiry not amenable to decision on the pleadings.

The City's motion for judgment on the pleadings as to the first cause of action is denied.

2. Second and Third Causes of Action for Declaratory and Injunctive Relief

The second cause of action for declaratory relief, and the third cause of action for injunctive relief, both asserted in connection with the City's alleged Brown Act violation, are duplicative of the first cause of action.

The second cause of action seeks a declaration that the City violated the Brown Act, and adds nothing to the mandamus claim in the first cause of action. The City's alleged violation is a one-time violation of the Brown Act, and not a circumstance in which a declaration of rights is appropriate because the City has a pattern and practice of holding closed sessions on parkland swaps. *See* Shapiro v. San Diego City Council, (2002) 96 Cal.App.4th 904, 915.

The third cause of action for injunctive relief under the Brown Act seeks an injunction against using secret intermediaries or holding closed sessions about the parkland swap or any pending litigation without complying with the Brown Act. To the extent that this relief is any broader than the relief sought in the mandamus claim, it is unwarranted for the same reasons as the second cause of action.

The motion for judgment on the pleadings is granted on the second and third causes of action, without leave to amend.

E. Conclusion

The City's motion for judgment on the pleadings is denied on the first cause of action, and granted on the second and third causes of action.

THE BROWN ACT

OPEN MEETINGS FOR LOCAL LEGISLATIVE BODIES

2003

CALIFORNIA ATTORNEY
GENERAL'S OFFICE

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. (§ 54954.2(a).)

Section 54954.2 also contains specific procedures by which the agenda requirement may be avoided in other specified circumstances as well. (§ 54954.2(b).)

B. Exceptions to Agenda Requirements

The Act identifies three situations in which a body is permitted to discuss or take action on a matter at a regular meeting where the matter was not first described on a duly noticed agenda. (§ 54954.2(b).) Prior to discussing a matter which was not previously placed on an agenda, the item must be publicly identified so that interested members of the public can monitor or participate in the consideration of the item in question.

The body may discuss a nonagenda item at a regular meeting if, by majority vote, the body determines that the matter in question constitutes an emergency pursuant to section 54956.5. (§ 54954.2(b)(1).) Any discussion held pursuant to this exception must be conducted in open session, since emergency meetings held pursuant to section 54956.5 cannot be conducted in closed session.

The body may discuss an item which was not previously placed upon an agenda at a regular meeting, when the body determines that there is a need for immediate action which cannot reasonably wait for the next regularly scheduled meeting. (§ 54954.2(b)(2).) However, the Act specifies that in order to take advantage of this agenda exception, the need for immediate action must have come to the attention of the local "agency" after the agenda had already been posted. (§ 54954.2(b)(2).) The Legislature's choice of the term "agency" rather than "body" seems calculated to limit use of this exception by prohibiting its usage if the local agency, i.e. staff, and not merely the body, had knowledge of the situation requiring action prior to the posting of the agenda. Lastly, the determination that a need for immediate action exists must be made by two-thirds of the members present or, if two-thirds of the body is not present, by a unanimous vote of those remaining. (§ 54954.2(b)(2).)

Finally, where an item has been posted on an agenda for a prior meeting, the item may be continued to a subsequent meeting that is held within five days of the meeting for which the item was properly posted. Under these circumstances, the items need not be posted for the subsequent meeting. (§ 54954.2(b)(3); see also, §§ 54955-55.1 [concerning adjournment and continuances], *infra* at p. 25.)

C. Public Testimony

Every agenda for a regular meeting shall provide an opportunity for members of the public to directly address the legislative body on any item under the subject matter

jurisdiction of the body. With respect to any item which is already on the agenda, or in connection with any item which the body will consider pursuant to the exceptions contained in section 54954.2(b), the public must be given the opportunity to comment before or during the legislative body's consideration of the item. (§ 54954.3(a).) The public testimony requirement appears to apply to closed sessions as well as open meetings, but see section 11125.7(d) of the Bagley-Keene Act, concerning state bodies, which was added in 1993 to expressly provide otherwise. Accordingly, this office believes that it would be prudent for legislative bodies to afford the public an opportunity to comment on closed-session items prior to the body's adjournment into closed session. The only exception to the public testimony requirement is where a committee comprised solely of members of the legislative body has previously considered the item at a public meeting in which all members of the public were afforded the opportunity to comment on the item before or during the committee's consideration of it, so long as the item has not substantially changed since the committee's hearing. (§ 54954.3(a).)

Where a member of the public raises an issue which has not yet come before the legislative body, the item may be briefly discussed but no action may be taken at that meeting. (§ 54954.3(a).) The purpose of the discussion is to permit a member of the public to raise an issue or problem with the legislative body or to permit the legislative body to provide information to the public, provide direction to its staff, or schedule the matter for a future meeting. (§ 54954.2(a).)

The Act specifically authorizes the legislative body to adopt regulations to assist in processing comments from the public. The body may establish procedures for public comment as well as specifying reasonable time limitations on particular topics or individual speakers. So long as the body acts fairly with respect to the interest of the public and competing factions, it has great discretion in regulating the time and manner, as distinguished from the content, of testimony by interested members of the public. (§ 54954.3(b).)

When a member of the public testifies before a legislative body, the body may not prohibit the individual from criticizing the policies, procedures, programs or services of the agency or the acts or omissions of the legislative body. (§ 54954.3(c).) This provision does not confer on members of the public any privilege or protection not otherwise provided by law.

Public meetings of governmental bodies have been found to be limited public fora. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. (*Leventhal* v.

Vista Unified School Dist. (1997) 973 F.Supp. 951; *Baca* v. *Moreno Valley Unified School Dist.* (1996) 936 F.Supp. 719.) These decisions found that prohibiting critical comments was a form of viewpoint discrimination, and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue.

In 78 Ops.Cal.Atty.Gen. 224, 230 (1995), this office opined that the body could prohibit a speaker from making comments that were outside the body's jurisdiction. However, when applying this opinion, the body must take into account the court's broad decisions as discussed above.

2. **Special Meetings**

Under the Act, the presiding officer or a majority of the body may call a special meeting. So long as substantive consideration of agenda items does not occur, a majority may meet without providing notice to the public in order to call the meeting and prepare the agenda. (*216 Sutter Bay Associates* v. *County of Sutter* (1997) 58 Cal.App.4th 860, 881-882.) Notice of a special meeting must be provided 24 hours in advance of the meeting to all of the legislative body members and to all media outlets who have requested notification. (§ 54956; 53 Ops.Cal.Atty.Gen. 245, 246 (1970).) The notice also must be posted at least 24 hours prior to the meeting in a location freely accessible to the public. The notice should indicate that the meeting is being called as a special meeting, and shall state the time, place, and business to be transacted at the meeting. No other business shall be considered at the special meeting. Notice is required even if the meeting is conducted in closed session, and, even if no action is taken. A member of the local body may waive failure to receive notice of the meeting by filing a written waiver prior to the meeting or by being present at the meeting.

At every special meeting, the legislative body shall provide the public with an opportunity to address the body on any item described in the notice before or during consideration of that item. (§ 54954.3(a).) The special meeting notice shall describe the public's rights to so comment. (§ 54954.3(a).)

3. **Emergency Meetings**

When a majority of the legislative body determines that an emergency situation exists, it may call an emergency meeting. (§ 54956.5.) The Act defines an emergency as a crippling activity, work stoppage or other activity which severely impairs public health, safety or both. (§ 54956.5(a)(1).) Absent a dire emergency, telephonic notice must be provided to all media outlets that have requested that they receive notice of any special meetings called pursuant to section 54956 at least one hour prior to the meeting. (§ 54956.5(b).) In the case of a dire emergency, notice need only be provided at or near the time that notice is provided to the members of the body. (§ 54956.5(b).) A dire emergency is a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and

THE SACRAMENTO BEE

Q&A: Open-government advocate Terry Franke sheds light on Public Records Act

cpiller@sacbee.com

Published Monday, Mar. 11, 2013

The California Public Records Act, enacted in 1968, made access to state and local government records easier and faster, and eliminated many hurdles the public faced in trying to stay informed about how government bodies and officials operate behind closed doors.

Sunshine Week – a national celebration and discussion of open access – started Sunday and runs through Saturday.

The Bee asked Terry Francke, a leading expert on access to government information, to describe the act and the challenges still faced by the public as law and technology have evolved.

Francke is co-founder and general counsel of Californians Aware, a nonprofit, nonpartisan group that advocates for increased openness and public disclosure by government. He formerly served as executive director and general counsel for the California First Amendment Coalition and legal counsel for the California Newspaper Publishers Association.

What led to passage of the Public Records Act in 1968?

It's the result of several attempts back in the 1960s to put together a comprehensive law to replace sort of a jumble, a mixture of statutes. Under those older laws, courts were left to decide, on a case-by-case basis, whether a given document was to be considered accessible to the public.

Under the act, almost any record created by a government agency concerning government business is presumed to be public, leaving the burden of withholding on the government.

How does it compare to similar laws in other states, or to the federal Freedom of Information Act, passed in 1966?

The current state of the Public Records Act probably leaves it behind most other states, less demanding than most other states because of a provision that allows the government to exempt records by arguing that the public interest is better served by withholding than disclosing.

Also, the act's exemption for records of law enforcement investigations is very comprehensive and has been interpreted to be permanent. It's so universal that some officers don't realize that there is discretion there.

If there were an even-handed rule, then a journalist or some other requester could argue, and the court could conclude, that while the department does have the discretion to

withhold, in some cases, circumstances show that there is a greater public interest in letting the public know how this investigation was conducted. It's a bias for nondisclosure built into the Public Records Act, an escape hatch for the government.

The courts have also supported withholding documents that are part of a "deliberative process," which has been used by public agencies to prevent disclosure by labeling – or mislabeling – documents as drafts.

How does the act relate to California Proposition 59, approved by voters in 2004, which adds sunshine provisions to the state constitution?

A big difference made by Proposition 59 is that now if you have a rule of law that provides for public access to government meetings or government records, that law is to be interpreted broadly, generously. And that if you have a rule that limits access, that rule is to be interpreted strictly or narrowly. It prevents agencies from stretching secrecy farther than where it belongs.

What are the act's key strengths and top challenges?

The big difference made by the law is that the burden is placed on the government to cite a specific rule in denying access and that by and large, public agencies take the law seriously and do their best to comply with it, though the timing and the cost of compliance are not always satisfactory to the requester. Ironically, this is particularly true with requests for digital information.

That's the greatest single need for reform in the Public Records Act, because the public, given all the taxpayer funds spent on computer systems, and the idea that computer systems are supposed to make transfer of and access to information much more rapid and efficient.

It can get in the way for the kind of access to public information that people have come to expect as routine in their other uses of information and the Internet. It's deliberately done to slow, discourage or stop examination of public facts and figures.

Call The Bee's Charles Piller, (916) 321-1113, or follow him on Twitter, @cpiller.

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GOVERNMENT CODE - GOV

TITLE 5. LOCAL AGENCIES [50001. - 57550.] *(Title 5 added by Stats. 1949, Ch. 81.)*
DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000. - 55821.] *(Division 2 added by Stats. 1949, Ch. 81.)*

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000. - 54999.7.] *(Part 1 added by Stats. 1949, Ch. 81.)*

CHAPTER 9. Meetings [54950. - 54963.] *(Chapter 9 added by Stats. 1953, Ch. 1588.)*

54952.6. 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.

(Added by Stats. 1961, Ch. 1671.)

San -ed stuff
LS | JJ - Brown Act

San Jose Inside

Parent Accuses County Board of Education of Violating the Brown Act

Posted by Jennifer Wadsworth on Wednesday, February 6, 2013 Comments (0)

A parent has accused county Board of Education officials of violating the Brown Act by exchanging emails about a matter before the Nov. 7, 2012 meeting.

County school board officials broke open meeting laws by coming to a decision on school boundaries through emails instead of a public discussion, according to one angry parent.

Andrea Szabo wrote a letter to the Santa Clara County Board of Education alleging it violated the Brown Act. The complaint says that boardmembers exchanged private emails about a decision last November to deny her exemption request, which would have spared her neighborhood from a vote to re-assign it from one school district to another. Szabo, a resident of rural Santa Cruz County, has a history of complaints. She made news a few months ago for decrying the board's decision to redraw the boundary lines of two school districts.

"The decision to deny the request for waiver was in violation of the Brown Act due to a series of email discussions known as serial meetings ... among the superintendent and members of the board," writes Szabo, a mother of four who lives in the Lakeside School District.

Szabo says Superintendent Xavier De La Torre sent an email to board members asking their position on the waiver before placing it on the next public meeting agenda.

"The board has not expressed any interest in waiving the Education Code to limit the election area; instead, a district-wide election will take place as required by law," she alleges he wrote. Later in the complaint, Szabo says that De La Torre wrote: "If I have misinterpreted the board's interests, ... please let President [Joseph] Di Salvo know by Thursday, Nov. 1, so that we can discuss this issue."

Szabo infers that previous conversations occurred leading up to the statement asking the board's position on the matter.

"This assumption could be derived from his request for clarification of his potential misinterpretation of the collective board member's opinions," she writes. "It also appears the superintendent acted in conflict with the board bylaws which allow only the board secretary and president to confer on setting board meeting agendas, not through discussions or opinions of the entire board."

Szabo also notes that Trustee Darcie Green's vote may have been null and void since the District Attorney challenged the legality of her appointment. That's one of several legal matters that will be discussed in closed session, along with the botched condo loan given to former Superintendent Charles Weis.

The letter ends with a request that boardmembers be barred from using their personal email accounts to conduct county business and threatens to sue the county office over the legality of that November vote.

More from the Santa Clara County Board of Education agenda for February 6, 2013:

• Trustee Leon Beauchman requested a realignment study to look into possible reorganizations of the county's 31 school districts. The survey will offer five possibilities and examine ways to up state funding by repositioning boundaries.

• Technology makes it easier for students and school staff to engage in unethical behavior, like bullying, cheating or playing online poker during class. The board will hear a presentation from Assistant Superintendent Kelly Calhoun, who's head of a technology policies consulting service called ON[the]LINE. Calhoun will lead a discussion about how to update office of education policies to keep pace with evolving technologies, to prevent abuses and enhance education.

• The board will consider paying off or refinancing bond debt that paid for an administration building and a daycare. Two debts are up for consideration: $15.9 million refinanced in 2002 and another $5 million issued in 1997. Locking in one or both of the loans at today's lower market rates would save $1.2 million a year, minus a $200,000 up-front refinance cost. Or it could opt for a 100-percent payoff with the coming fiscal year's unrestricted general fund.

• The county office is on track to meet its financial obligations for the coming three years, according to the first interim budget update going before the board. Overall, revenues rose and expenditures dropped, the report says.

WHAT: Santa Clara County Board of Education meets
WHEN: 5pm Wednesday
WHERE: County Office of Education, 1290 Ridder Park Drive, San Jose
INFO: http://www.sccoe.org

Tagged

Rocketship's cofounder departing for online learning startup

January 31st, 2013 | 21 Comments |

By John Fensterwald

Like 0

John Danner is leaving **Rocketship Education**, the innovative, Palo Alto-based K-5 charter school network he cofounded seven years ago, to become an entrepreneur again. He is starting an as yet unnamed company, he says, "out of my frustration that the online learning space never embraced student-centered learning, so we are going to try to do it right."

John Danner

Rocketship announced Thursday that Rocketship President Preston Smith, a former teacher who started Rocketship with Danner and was the principal of the first Rocketship school, will become both president and CEO.

Danner and Smith said that the transition was planned from the beginning of Rocketship and that now, with Rocketship facing its next stage of growth, is the right time. Rocketship, with about 200 employees, operates seven schools with 3,800 students in San Jose with approval to open 30 in Santa Clara County within five years. In August, it will open an elementary school in Milwaukee, its first out-of-California expansion. Rocketship's board will vote next month on whether to open the first of several schools in Nashville.

Preston Smith

"We will continue to work relentlessly at Rocketship to ensure that the eliminated in our lifetime in San Jose and beyond," Smith, who has overseen Rocketship's operations over the past year, said in a news release. Bringing it to scale, including developing a cadre of new leaders, is the next challenge, he said.

Danner founded, ran and then sold NetGravity, an Internet advertising software company, before teaching for three years in Nashville. He returned to San Jose, convinced that online software, programmed to track to individual students' learning, could fill in gaps in students' knowledge and teach rudimentary skills, freeing up teachers' time for more in-depth instruction.

The learning lab that students attend for 100 minutes daily, run by paraprofessionals, also saves money in personnel, which Rocketship plows back to hire two extra administrators at each school: an assistant principal and academic dean to train teachers. Most of Rocketship's teachers are beginning teachers, recruited from Teach for America.

So far, the model has worked. The overall API score for Rocketship schools, where 80 percent are English learners and 90 percent are from low-income families, was 855 last year, far above the average for schools with minority students.

But Smith and Danner remain dissatisfied with the limitations of commercial online software and the difficulty in smoothly feeding helpful information on individual students' performance in the learning lab to the classroom teachers so that they can tailor instruction. That's the illusive goal of personalized learning and is one area that Danner's new company apparently will focus on.

Smith said that Rocketship is developing the next iteration of hybrid or blended learning, which will involve integrating computers in a classroom setting.

Danner's startup company plans to work closely with Rocketship. In order to avoid a potential conflict of interest, Danner is stepping down from Rocketship's board of directors. "Rocketship is the first partner, and hopefully it will make it easier for all schools to become student-centered," he said in an email.

Going deeper

Rocketship Education's next phase: technology in a blended classroom

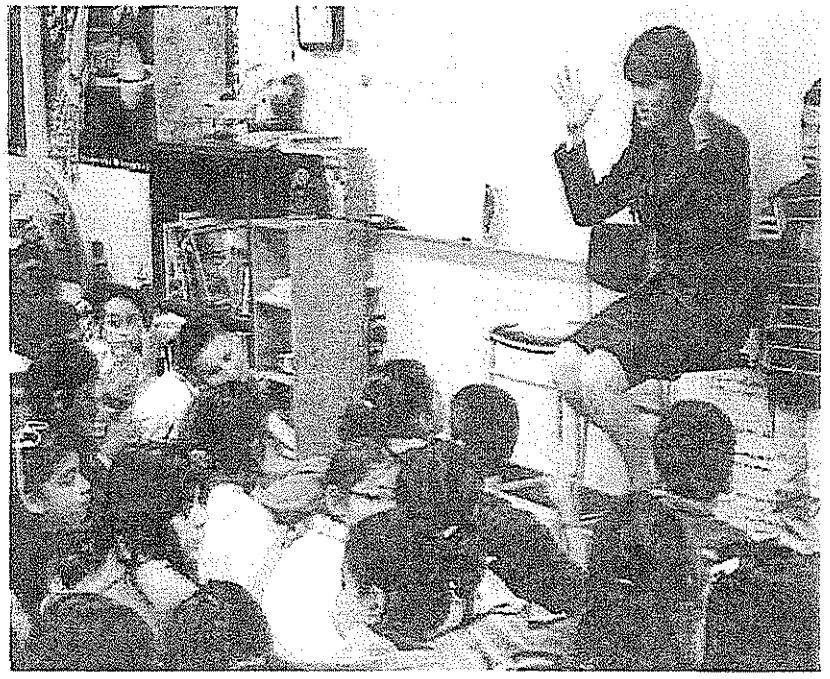
April 30th, 2013 | 2 Comments |

By John Fensterwald

Palo Alto-based **Rocketship Education** has attracted national attention in the past few years for its innovative use of technology and impressive test scores for its largely low-income, Hispanic students.

Now, as other districts and charter schools are starting to emulate the Rocketship model, which relies on computer-guided instruction as a key component, the K-5 charter school organization is considering leaving it behind, like a first-stage booster, and moving toward a different a 21st century classroom. Instead of rotating students into a "learning lab" – a large computer room – for about quarter of the day as it does now, several of Rocketship's seven San Jose schools are experimenting with turning their learning lab into one large, all-day classroom incorporating both technology and three teachers and non-credentialed teaching assistants. Over the course of the day, between 100 and 120 students move from individual computer-based instruction to small-group lessons to a large-group setting, moving on cue with amoeba-like fluidity from one activity to another – at least when it's working smoothly.

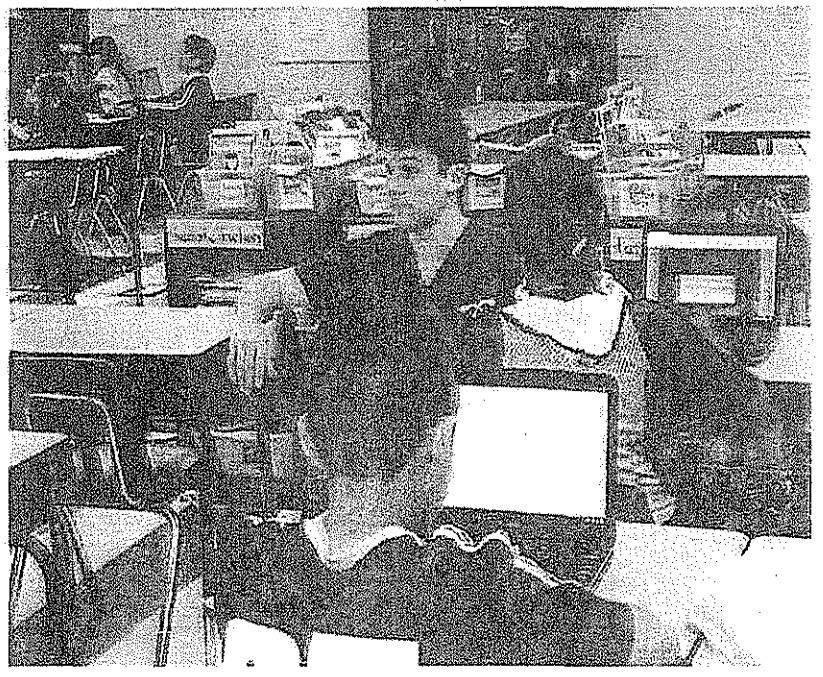
On an afternoon earlier this month at **Rocketship Mosaic**, a two-year-old, two -story school on a postage stamp lot a block off the main drag of San Jose's Little Saigon, the 4th and 5th graders in their new flexible classroom were doing independent and group work. At a whiteboard in one end, with about 40 students sitting on a rug before her, sixth-year English teacher Judy Lavi led a writing exercise, analyzing a passage for Greek and Latin roots, grammar and



Rocketship Mosaic English teacher Judy Lavi discusses a reading passage with several dozen students in the front of the former learning lab. Photo by John Fensterwald.

sentence fluency. Casey Rowe, a fifth-year teacher in his second year at Rocketship, had switched off after guiding the full group through an exercise preparing for the impending state standardized testing. He was now checking the progress of students working on math or English problems, at their own pace, on inexpensive laptops. At a whiteboard at the opposite end from Lavi, first-year math teacher Devynn Patterson was working with nine or 10 students on simple equations, such as x-8=4.

Shifting from a static rotational schedule of a computer lab to an open classroom marks the next horizon in blended learning, the integration of computer-based and teacher-based instruction. This year, **Summit Public Schools** is pioneering this model in math a quick crow's flight away from Rocketship Mosaic at its two high schools in San Jose. It tore down walls in a wing of its campus and has brought ninth and tenth graders together in a two-hour block, combining algebra, geometry and, for fast-advancing students, Algebra II and beyond.



Fifth-year teacher Casey Rowe checks in with students who are doing math exercises online. Rocketship uses three software programs that assign lessons based on students' progress.

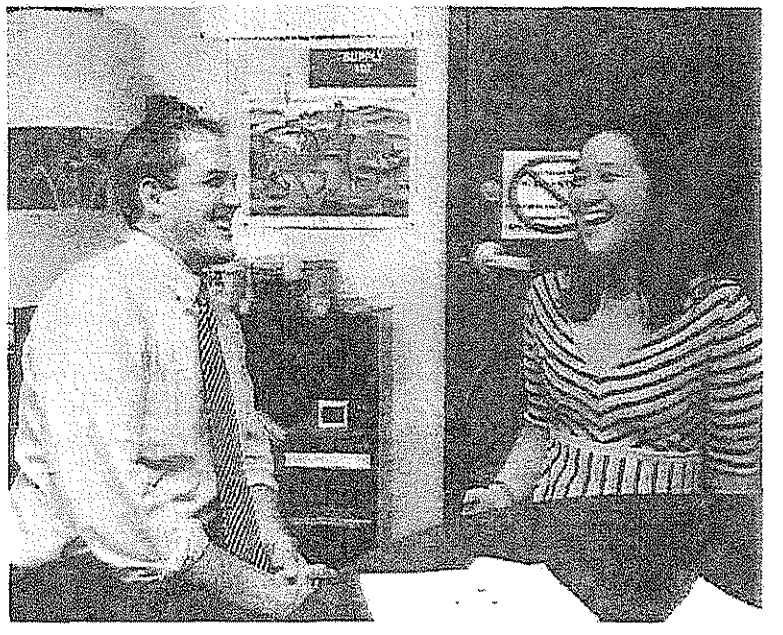
But elementary school students, with shorter attention spans and less focus, pose distinct challenges in an open classroom, which is why Rocketship is cautious about trying the model in earlier grades.

Building on, not rejecting, a computer lab

Rocketship CEO Preston Smith and Charlie Bufalino, national development strategiest for Rocketship, said the pilot is not a rejection of the learning lab concept but a recognition of its limitations. The 100 minutes that students have spent in the learning lab daily have been an essential element of Rocketship's strategy. With various degrees of accuracy, the half-dozen math and reading programs tailor lessons to students' strengths and weaknesses and track individual students' progress. They particularly help fill in gaps in learning in areas where repetitive exercises reinforce basic skills and allow other students to advance at a faster pace.

The learning lab also was a financially shrewd model for cash-strapped California schools, which have seen their basic funding cut by nearly a quarter over the past five years. Rotating students from four classes per grade into the lab, operated by lower paid, non-credentialed tutors and staff, eliminated the expense of one teacher per grade or about $500,000 per school, which Rocketship has used to increase teachers' pay, underwrite construction of additional schools and – this is key – to hire an assistant principal charged with teacher training at every school. At a time when most districts were cutting back mentor teaching positions and administrators, Rocketship offered extensive guidance to first- and second-year teachers from Teach for America, who comprise about half of the teaching staff.

But there remained a disconnect between what students did in the lab and what teachers taught in the classroom. Despite Rocketship's effort to build a sophisticated data system to feed data to guide instruction, it initially was "a black box to me," said Adam Nadeau, principal of Rocketship Mosaic. "There was no context around what students were getting at the lab."



Rocketship CEO Preston Smith and Lynn Liao, who is overseeing the flexible classroom project, share a story at Rocketship Mosaic, one of the pilot schools. Photo by John Fensterwald.

"The technical infrastructure was good but not perfect," Bufalino acknowledged. "The system was not as good as we thought."

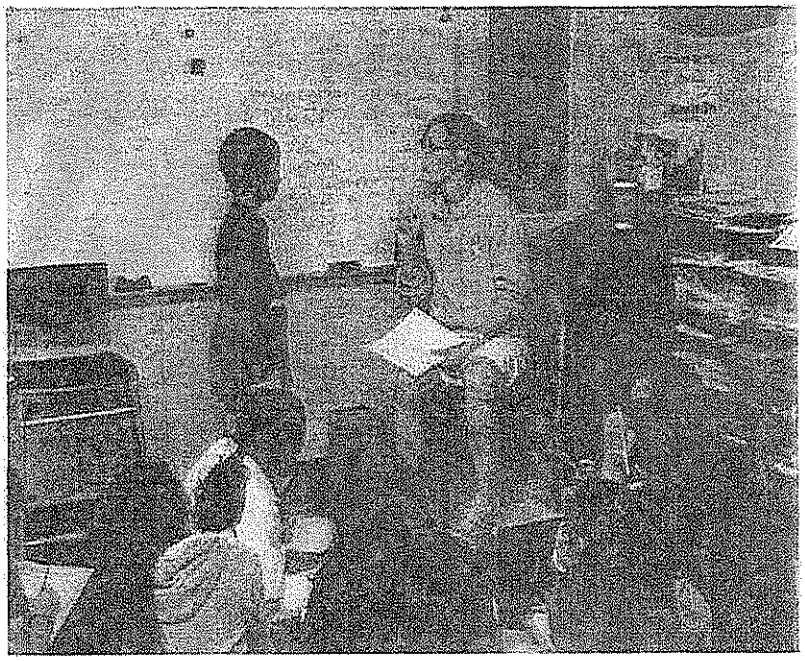
Rocketship's scores on the California Standards Tests have been among the highest in the state for its demographics of English learners and low-income students, but, Smith said, "We weren't satisfied where they were at. We weren't delivering on writing and the feedback from middle school is that kids were good in class but less likely to work independently."

At Rocketship, teachers in each grade are specialists, so students rotated not only to the learning lab but also to math and English language arts teachers. This model didn't allow flexible time for project-based learning, necessary, Smith said, to develop deeper learning skills.

New challenges for teachers

Computer-based learning will continue as a key element in the flexible classroom, although the time each student spends each day may vary, based on their needs. And Smith says the new model will be cost-neutral. But the new flexibility provides opportunities to personalize learning. Nadeau estimates that no longer having to repeat

the same lesson to separate classes four times each day will free up a third of each teacher's instructional day. First-year teaching can be isolating, he said. The advantage here is that new teachers will get to see teaching modeled.



First-year math teacher Devynn Patterson leads a small group in another corner of the room. Photo by John Fensterwald.

"The new structure will allow master teachers to do most at first and hand off responsibility gradually to a new teacher," said Lavi, who taught in Oakland before Rocketship. "It will be like bowling with bumpers."

"The freedom to design a schedule to fit needs of kids is great experience for me as a professional," she said. Students are getting "a ton more small group attention than previously," because, working as a team, the three teachers and a full-time teaching assistant can maximize the larger groups and target the smaller clusters of students for a literature discussion or tutorial on fractions.

The larger setting adds complexities. Co-planning daily lessons during 50 minutes of prep time is important; data analysis, now the teachers' responsibility, remains critical. Classroom management, keeping students on task with a lot happening around them, can be daunting for an inexperienced teacher. Rocketship is recruiting fewer first-year teachers for next fall, but it will remain a young staff.

Lynn Liao, Rocketship's chief talent officer, who is leading the flexible classroom project, said that there was initially a dip in test results because of difficulties with implementation – "until we got our feet underneath it and set expectations with kids." But schools didn't see behavior issues that parents and teachers had anticipated, she said, and now Rocketship expects to see benefits of the model.

"One of our hypotheses is that there would be greater teacher collaboration, and that has been a pleasant surprise," she said.

Michael Horn, executive director of Innosight Institute, a San Mateo-based research outfit and an authority on blended learning, commended Rocketship for "taking a huge step forward" from the stationary lab model whose benefits provide "the low hanging fruit." Districts have been doing flexible learning for credit recovery and dropout prevention programs in high school, but most districts have found it uncomfortable to go

beyond those programs, he said. Rocketship will show if there are key differences in the flexible model at an elementary school level.

Horn said teachers playing off each others' strengths "could lead to an unbundling of roles," with some teachers doing data work and others leading small group instruction or taking charge of lesson planning. "I actually think it could make teachers' jobs easier, but that remains to be seen."

"Change is hard and we must be purposeful about it," Smith said. Technology will be a great tool but not a silver bullet. In the end, "it will be about how we do professional development and support our staff."

Going deeper

Innosight Institute's analysis of Rocketship Education's blended learning model;

PBS education correspondent **John Merrow's segment on Rocketship**, December 2012;

Piece critical of the Rocketship approach by Valerie Strauss of the Washington Post, January 2013.

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EdSource encourages commenters to use their real names. Commenters who do decide to use a pseudonym should use it consistently.

2 Responses to "Rocketship Education's next phase: technology in a blended classroom"

XYZ says:
May 1, 2013 at 4:27 pm

As I read this, I thought of all us Luddites who are out there and can sometimes grasp computer/tech stuff and sometimes not; we need this kind of training to; but why would any tech company do this? Do they care? If so, name them. You just don't get the info/knowledge by being in a program on line; we all learn differently is what the above article says; Luddites have varying styles too. **Reply**

Educator says:
May 2, 2013 at 12:11 pm

I know a lot of folks have criticized Rocketship, but I'm hoping that Rocketship can find a better way to educate, although I'm skeptical.

http://garyrubinstein.teachforus.org/2013/04/30/the-three-biggest-tfa-lies/

This is an interesting take on TFA from a once supporter to now outspoken critic. Just food for thought. **Reply**

Leave a Reply

Name *

Email * (will not be published)

Website

FRONTLINES

Tuesday night live!

Does Sacramento's passionate, if motley, cabal of public commenters need more time at city council?

by Nick Miller

nickam@newsreview.com

As City Hall deliberates possible changes to the rules for its weekly council meetings, Mac Worthy—the most loyal, if notorious, public commenter—probably has something to say.

That's because Worthy always gets a word in. He attends nearly every council meeting, often weighing in on multiple agenda items; at a recent one, he spoke on three items for a total of six minutes—but told SN&R he'd "hoped to talk on four for eight."

He claims to have only missed two meetings over the past couple years, a better attendance record than the mayor. And it's also not unusual to spot him at committee hearings, county board

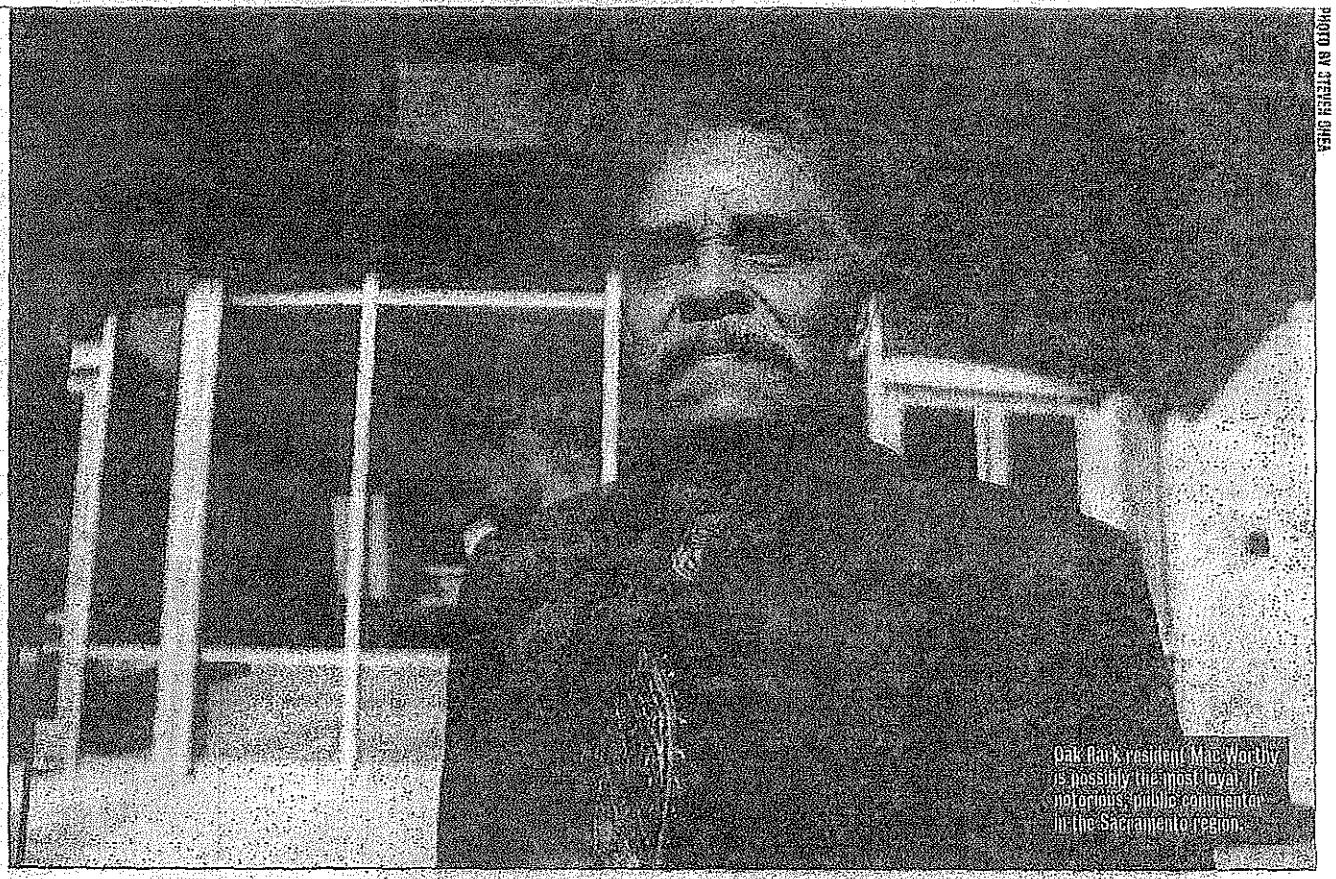


PHOTO BY STEVEN SHEA

Oak Park resident Mac Worthy is possibly the most loyal, if notorious, public commenter in the Sacramento region.

So goes the bizarre cult of anti-personality that sometimes plays out live each Tuesday night at city council. And a new proposal by local activist

"And I think that the current mayor probably does not enjoy those meetings as much as his predecessor," he added.

Maybe this was why, a few years

At another recent council meeting, a woman taps Worthy on the shoulder. "Early bird," she says. He looks up, smiles, then continues shuffling through

of supervisor gatherings, local protests and other city's council powwows. Heck, he was even eyed at the California Republican Party convention earlier this month.

Nick Miller regularly updates city council coverage live on Twitter. Follow him at @NickMiller916.

Worthy is, on the surface, Sacramento's model citizen. But regulars at these meetings and events chide him as the guy who speaks too often, too fast, and too incomprehensibly, what with his Southern cadence and occasional rapid-fire randomness.

Even a police officer at City Hall, Worthy says, once told him that he "speaks too much."

The 71-year-old South Carolina native comments so frequently that he's now Internet famous: Sacramento Kings supporters—de rigueur at council these days as well—recently created a popular online meme: a picture of Worthy standing at the podium with the words "pimping the people" emblazoned in large type across the photo.

Indeed, "pimping the people." It's Worthy's new mantra at Tuesday night council, and he, along with his coterie of fellow commenters, recites it often—perhaps ad nauseam—when lecturing city leaders on their wrongdoings.

Worthy accepts that he has naysayers. But he points out that he also has fans. "I have people walk up to me and say, 'Hey, you are that guy downtown. Keep doing what you're doing,'" he says.

group Eye on Sacramento would give public commenters like Worthy *more* time in front of the dais each week.

Craig Powell, executive director of EOS, said that a his group analyzed nearly a decade of council meetings and discovered that during Mayor Kevin Johnson's tenure, they're shorter than ever.

back, council voted to lower the amount of time the public was allowed to speak from three minutes to two. The goal here was to keep the meetings moving. Yet, according to the EOS study, this trim only saved an average of 21 minutes each meeting.

"And it has really degraded the quality of the public comments," Powell argued.

"A lot of kids come up to me and say, 'You got to slow down with your talking, we don't understand what you're saying.' That's actually why I need more time."

Mac Worthy
on why he needs three minutes instead of two to speak at city council

As the report reads: "The average length of city council meetings over the past four years has been 2 [hours], 41 [minutes], down from 5 [hours], 24 [minutes] during the final four years of Heather Fargo's tenure as mayor, a remarkable 50 [percent] reduction."

The gatherings are briefer now, Powell explained, because council members tend to talk less among themselves during meetings and more behind the scenes or outside of meetings, and items are often removed from the discussion agenda to the consent calendar (where they are up-down voted on without debate).

The EOS proposal asks that the public be permitted three minutes of comment for most council items—but with the caveat that there's a cap on the total amount of minutes allowed.

"We call this the 'Mac Worthy Rule,'" he said.

Worthy himself likes the idea.

"A lot of kids come up to me and say, 'You got to slow down with your talking, we don't understand what you're saying,'" he told SN&R. "That's actually why I need more time, because I can't get everything in there. In Roseville, you get five minutes!"

a notebook while seated in an aisle seat of the second row. It's more than a half-hour before the meeting's start.

Tonight, there are few commenters, likely because there's but one agenda item, an update on the Sacramento Kings situation. One praises the mayor and even sings, another rants about crack in Oak Park. And then there's Worthy, blasting council over the prospect of using public money for private development.

That's right: "Pimping the people."

"Understand a pimp," Worthy begins after the meeting, explaining his catch-phrase. "What does a pimp do? Wait on his money. And that's what the political people do. Wait on their money. They're not doing anything."

Is this why, ostensibly, there are fewer people interested in making public comments?

Powell, an on-off figure at council meetings for years, concedes that the public is seemingly less engaged with local government. "Yes, I think that's true.

"But I think part of it is that people get discouraged when they go down to council and they have 120 seconds to make their case."

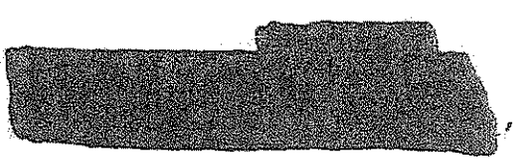
Would an extra minute make a difference? □

Local Government

Date of Hearing: 01/15/2014

BILL NO.	AB 194	AB 745	AB 1172	AB 1179
ACTION VOTED ON	Do pass	Do pass, to Consent	Do pass; re-refer to Cmte on Rev. & Tax.	Do pass; re-refer to Cmte on Appr.
	Aye : No	Aye : No	Aye : No	Aye : No
Achadjian (Chair)	Not Voting	X :	X :	X :
Levine (V. Chair)	X :	X :	X :	X :
Alejo	X :	X :	X :	X :
Bradford	X :	X :	X :	X :
Gordon	X :	X :	X :	X :
Melendez	Not Voting	X :	X :	: X
Mullin	X :	X :	X :	X :
Rendon	X :	X :	X :	X :
Waldron	Not Voting	X :	X :	: X
	Ayes: 6 Noes: 0	Ayes: 9 Noes: 0	Ayes: 9 Noes: 0	Ayes: 7 Noes: 2

RECEIVED:_____



, Chair

(2)REPORTS OF STANDING COMMITTEES<c2>

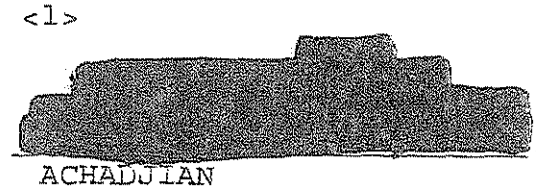
(2)Committee on Local Government

[t8] Date of Hearing: January 15, 2014 [_]<r>

¶ Mr. Speaker: Your Committee on Local Government reports:

¶Assembly Bill No. 194 (6-0)

(1)With the recommendation: Do pass. <l>



ACHADJIAN, Chair ___

(5)Above bill(s) ordered to second reading.

AMERICAN CIVIL LIBERTIES UNION OF CALIFORNIA

CALIFORNIA LEGISLATIVE OFFICE
1127 Eleventh Street, Suite 534
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

January 6, 2014

The Honorable Nora Campos
State Capitol, Room 3160
Sacramento, California 95814

Re: AB 194 – Support

Dear Assembly Member Campos:

The ACLU is pleased to inform you of our support for AB 194, as amended, related to the Brown Act.

AB 194 creates the opportunity for citizens denied the limited speech rights granted by the Brown Act under Government Code section 54954.3 to demand an opportunity to be heard enforceable by court order, if necessary. It also gives the body that had denied speech opportunities unintentionally the opportunity to "cure and correct" the oversight and avoid litigation. The current statutory remedies for violations of the public comment are insufficient to properly protect the public's right to be heard at local government meetings. We urge passage of this legislation.

If you wish to discuss this matter further, feel free to contact our office.

Sincerely,

Francisco Lobaco
Legislative Director

Cc Members & Consultant, Assembly Local Government Committee

ACLU OF NORTHERN CALIFORNIA
Abdi Soltani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Kevin Keenan, Executive Director
P.O. Box 87131
San Diego, CA 92138-7131
(619) 232-2121

January 8, 2014

Honorable Nora Campos
California Assembly
State Capitol
Sacramento, CA
95814

RE: AB 194 -- SUPPORT

Dear Assembly Member Campos,

Californians Aware strongly supports your AB 194. We closely monitor press and individual reports of suspected violations of the Ralph M. Brown Act, and have noticed that too often the complaint deals with a denial of a citizen's statutory and constitutional right to address the legislative bodies of local agencies in their open and public meetings.

AB 194 is a welcome opportunity to protect the public's right to address its representatives in meaningful ways in the public forum.

Sincerely,

Terry Francke
General Counsel
Californians Aware

2218 Homewood Way • Carmichael, CA 95608 • Phone (916) 487-7000 • info@calaware.org

association of california
school administrators

officers
president Marc Ecker, Ph.D. president-elect Randall V. Delling, Ed.D. vice president Tom Armelino
vice president for legislative action Lisa Gonzales, Ed.D. past president David A. Gomez, Ph.D. executive director Wesley Smith, Ed.D.

January 8, 2014

The Honorable Nora Campos
Speaker Pro Tempore
State Capitol, Room 3013
Sacramento, CA 95814

AB 194: OPPOSE

Dear Speaker Pro Tempore Campos:

The Association of California School Administrators, ACSA, has reviewed your AB 194 and must respectfully oppose this measure. AB 194 will be heard in the Assembly Local Government Committee on January 15, 2014.

AB 194 would negate any action taken by a school district or county office of education if that action was taken in accordance of curtailing public comment/criticism associated with the Brown Act. Under the Brown Act, governing boards of school districts and county offices of education adhere to strict rules. Every agenda for a regular or special meeting must allow members of the public to speak on any item of interest so long as the item is within the subject matter jurisdiction of the local entity, including criticism of policies, procedures, programs or services of that entity. The Brown Act does allow the school district to adopt reasonable regulations including time limits on public comments. It is only in this way that a meeting can be effectively run so that all issues on an agenda can be dealt with.

Under current law, individuals have had the ability to pursue litigation over an allegation that a school district or county office of education has violated the Brown Act. As you know, two years ago, SB 1003 (Yee) added a process for bringing forth allegations of past Brown Act violations. The ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

ACSA's opposition to AB 194 is in regards to the provisions which would nullify an action of a school district or county office of education if during the discussion of that item, an individual's criticism is curtailed or public comment was not allowed. The "null and void" provisions of the Brown Act exists to address decisions made in a secret and undisclosed manner when no other remedy exists. AB 194 expands the use of the "null and void" decision to challenge any controversial public decision or limitation on comment.

There is no issue more important to a community than the education of their children. Discussions at the local board level can be quite passionate necessitating the need for school district governing boards to continue to utilize their discretion in not only providing time limits for testimony, but to also stop discussion if the audience becomes unruly. AB 194 might be necessary if the Brown Act did not already

office locations

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Fax 916.444.3739

burlingame
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Tel 650.692.4300 • 800.608.2272
Executive Offices Fax: 650.692.1608
Educational Services Fax: 650.692.6858
Financial Services Fax: 650.259.1029
Member Services Fax: 650.692.7297

ontario
3602 Inland Empire Blvd., Suite A-230, Ontario, CA 91764
Tel 909.484.7505 • 800.608.2272
Fax 909.484.7504

web site
www.acsa.org

expressly require public comment and criticism on any issue before the board or within its jurisdiction. But ACSA believes AB 194 will result in the disruption of many decisions decided by governing boards because of the threat of litigation.

For these reasons, ACSA must respectfully oppose AB 194.

Sincerely,

Laura Preston

Laura Preston
Legislative Advocate

cc: Members of the Assembly Local Government Committee
Mia Yokoi-Shelton, Consultant to the Assembly Local Government Committee
William Weber, Republican Consultant

Association of
California Water Agencies
Since 1910

January 10, 2014

The Honorable Katcho Achadjian
Assembly Committee on Local Government
State Capitol, Room 4098
Sacramento, CA 95814

Re: Assembly Bill 194 (Campos) - OPPOSE

Dear Chair Achadjian:

On behalf of the Association of California Water Agencies (ACWA), I am writing to express ACWA's opposition to AB 194 (Campos) regarding actions for violations of open meetings.

AB 194 would allow a district attorney or an individual to file a lawsuit to void any action taken by a legislative body when it has been found in violation of government code section 54954.3, the law governing protection for public criticism.

While we support the public's opportunity to address the public board with their issues and concerns, we are concerned that the bill as written would prohibit the chairperson of the public board to place a time limit on the public's opportunity to comments on specific items on the agenda.

Unfortunately, it is often the unpopular decisions that are the most controversial and contentious, for both board members themselves and constituents. It is often the case that these contentious meeting are also the best attended meetings and time management is of the essence in order to get the public agency's business done in a timely efficient manner. Without time limits on comments, many of these meetings would be unmanageable, lasting far into the night. AB 194 would allow anyone who believes that they weren't afforded all the time they thought they should have to provide public comment to bring an action against the chair.

It is our belief that the Brown Act currently provides the needed protection for the public to provide public comments on issues at a public agency board meeting. AB 194 is repetitive and unnecessary.

For the aforementioned reasons, ACWA opposes AB 194 and requests your "NO" vote when the bill is heard in the Assembly Local Government Committee on January 15, 2014.

Sincerely,

Whitnie Wiley
Legislative Advocate

WW:aa

cc: The Honorable Nora Campos
Members, Assembly Committee on Local Government
Angela Mapp, Principal Consultant, Assembly Committee on Local Government
William Weber, Consultant, Assembly Republican Caucus

California Special
Districts Association
CSDA
Districts Stronger Together

January 3, 2014

The Honorable Nora Campos
California State Assembly
State Capitol Building,Room 3160
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – Notice of Opposition [As proposed to be amended]

Dear Assembly Member Campos:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations, regrets to inform you of our continued opposition to your Assembly Bill 194, as proposed to be amended. CSDA fully supports and encourages public participation and engagement with local government agencies and elected officials. However, AB 194 would unnecessarily hinder special district boards' ability to conduct business on behalf of the millions of Californians who rely on them for core local services such as water, sanitation, fire protection, and healthcare.

We appreciate the opportunity to discuss our concerns with your office, as well as the proposed amendment to remove the misdemeanor penalty targeting the legislative body chair, as drafted in the introduced version of this bill. Unfortunately, the proposed amendment does not fully address our concerns, as outlined below.

Current Remedies are Sufficient and Appropriate
Specifically, AB 194 would create "null and void" penalties for violations of Government Code Section 54954.3, related to public comment periods. Current statute provides protections for public comment that is critical in nature, and prohibits a local legislative body from blocking such speech. Current statute also provides civil remedies for members of the public through mandamus, injunction, and/or declaratory relief as well the awarding of attorney's fees should a violation occur. This award can be significant and meaningful, and is appropriate for the nature of the violation.

Incompatible Addition to Existing Code Section
We understand the intent of AB 194 is to enhance the penalty for violating public comment period protections and does so by adding the "null and void" penalties that currently apply to other specified open meeting violations. However, "null and avoid" is incompatible with public comment violations for the following reasons and could further confuse this area of law.

1) <u>"Null and Void" applies to real action</u>. Public comments during an open meeting can address a laundry list of issues, both on and off the agenda. Members of the public can also address agenda items at that are listed as informational/discussion only or action items that require a vote. It is not clear how the court could "null and void" an action when there was simply no collective action taken, either because the agenda item was informational or the public comment addressed a matter not on the agenda.

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1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
t: 916.442.7887
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www.csda.net

A proud California Special Districts Alliance partner

Special District Risk Management Authority
1112 I Street, Suite 300
Sacramento, CA 95814
toll-free: 800.537.7790
f: 916.231.4111

CSDA Finance Corporation
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
f: 916.442.7889

2) "Null and void" applies to actions of the entire legislative body. All of the current open meeting requirements under Government Code Section 54960.1 subject to "null and void" penalties reflect collective actions taken by a board. This includes holding a meeting by teleconference, voting by secret ballot, reporting actions during a closed session, adopting new taxes or assessments, and holding emergency meetings. However, AB 194 would add a violation that results from a single board member's action, specifically when the presiding chair or president limits criticism during the public comment period. This addition would create inconsistency within the current section.

Finally, AB 194 unintentionally offers a new means to stall the decision-making process of a local legislative body. A speaker could claim that their negative comments were blocked and as a result hold a key decision in suspense. This could cause immeasurable harm to contracting agreements, appointments, license applications or any other time-sensitive issue that is required to be acted on during an open session of a public meeting.

For these reasons, CSDA respectfully maintains our opposition to AB 194, as it is proposed to be amended and heard before the Assembly Local Government Committee on January 15, 2014. Please do not hesitate to contact me if you have any questions regarding our position at (916) 442-7887.

Sincerely,

Dorothy Holzem
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

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95814

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January 6, 2014

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

RE: AB 194 (Campos) – Open meeting; protections for public criticism: penalties for violations.
As Proposed to be Amended – OPPOSE
Set for hearing January 15, 2014 – Assembly Local Government Committee

Dear Assembly Member Achadjian:

The California State Association of Counties must regretfully oppose Assembly Bill 194, by Assembly Member Nora Campos, which would allow a district attorney or an individual to file a lawsuit to void any action taken by a legislative body when it has been found in violation of the law governing protection for public criticism.

Current law states that a member of a legislative body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act 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 is guilty of a misdemeanor. The Brown Act additionally prohibits members of a legislative body from disallowing public criticism of the policies, procedures, programs, or services of the legislative body. The intent of this language is consistent with the Brown Act's overarching goal of transparency and ensures the public's right to information.

The Brown Act additionally provides the ability for legislative bodies to adopt the requirement that public comment be content-neutral and to apply reasonable time periods for public comment. In fact, it was concluded by the Attorney General (75 Ops.Cal.Atty.Gen. 89 (1992)) that five minutes per speaker is a reasonable time period by which to limit public testimony for local public agency meetings; in *Chaffee v. San Francisco Public Library Commission* (134 Cal.App.4th 109), it was determined by the court that limiting public comment to two minutes per speaker was not a Brown Act violation. AB 194, however, would limit the chairperson's ability to place reasonable time limits on public comment for the purpose of ensuring the timely conduction of public business since a speaker may easily charge that such restrictions were applied due to the content of their comments and seek to nullify any action taken therein.

County agencies conduct public business cognizant of the responsibility to ensure transparency and public access to information. As such, we support open meetings and the right of the public to comment on issues and criticize various county policies and procedures. However, we believe that not only does current law provide sufficient legal remedies for individuals who allege a Brown Act violation, but that no substantial evidence has arisen to warrant the need for this legislation; AB 194 would simply reduce the ability

1020 N St, Rm 157
Consultant

of counties to effectively conduct county business. For these reasons, CSAC opposes AB 194. If you need additional information regarding our position on this measure, please do not hesitate to contact me at 916-650-8171 or fconley@counties.org.

Sincerely,

Faith Conley

Faith Conley
Associate Legislative Representative

cc: The Honorable Norma Campos, California State Assembly
Members and Consultant, Assembly Local Government Committee

CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

CATHY DARLING ALLEN, PRESIDENT
Shasta County Clerk
1643 Market Street, Redding, CA 96001
530-225-5166 * Fax 530-225-5454 * Cell 530-604-2655
E-Mail: cdarling@co.shasta.ca.us
Website: www.caceo58.org

January 7, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098

Re: Assembly Bill 194 (Campos), re: Open Meetings: Protection for Public Criticism
California Association of Clerks and Election Officials...OPPOSE

Dear Assemblymember Achadjian:

The California Association of Clerks and Election Officials (CACEO) opposes Assembly Bill 194 (Campos), as amended on January 6, 2014. The measure would provide that any interested member of the public or the district attorney may seek a judicial determination that an action taken by a legislative body is null and void if the legislative body violated Government Code Section 54954.3 regarding public comment. The measure is scheduled to be heard in your Committee on Wednesday, January 15, 2014.

Existing law permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Brown Act. AB 194 would amend Section 54960.1 to add any violation of Section 54954.3, regarding public comment—not limited to subdivision (c) dealing with criticism of the public body—to the list of Brown Act sections subject to legal action.

Making any alleged violation of Section 54954.3 subject to this process potentially would subject a board of supervisors and other county boards, committees and commissions to additional costly litigation brought by any person. For example, a person could file a court action at any time he/she believed these other legislative bodies—which number in the thousands around the State—failed to adopt "reasonable regulations" that allow the public to "directly address the legislative body on any item of interest to the public."

We believe that the safeguards already contained in the Brown Act are sufficient.

CACEO urges that you hold AB 194 in Committee.

Sincerely,

Matt Siverling
Legislative Advocate

CC: Each Member/Consultant, Assembly Local Government Committee

WALDRON 5128

LEAGUE OF CALIFORNIA CITIES
1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

January 9, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: **AB 194 (Campos) Local Government. Open Meetings.** *(As amended January 6, 2014)*
Hearing Date: January 15, 2014 – Assembly Local Government Committee
Notice of Opposition

Dear Assembly Member Campos:

On behalf of the League of California Cities, I regret to inform you of our continued opposition to AB 194, as amended on January 6th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

The proposed amendment would remove the misdemeanor penalty for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. However, a very troubling provision remains in the form of authorization for actions for a judicial determination that a decision taken by a legislative body or local agency in violation of the Brown Act is null and void. This is a disruptive approach that distorts an existing provision of the Brown Act that was intended only to preclude governing bodies from holding secret proceedings.

First, current law already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the viewpoints of the speaker.

In addition, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. A local legislative body may establish rules for the conduct of its proceedings. However, these rules must preserve constitutional rights and be reasonable and not arbitrary and capricious.

This authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

The law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom of speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [Government Code Section 54950-54963]. A legislative body is permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) Chapter 732, Statutes of 2012, which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably oppose AB 194. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8252.

Sincerely,

Tim Cromartie
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

URBAN COUNTIES CAUCUS

URBAN COUNTIES CAUCUS
1100 K Street, Suite 101
Sacramento, CA 95814
(916) 327-7531

RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
1215 K Street, Suite 1650
Sacramento, CA 95814
(916) 447-4806

January 7, 2014

The Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – OPPOSE

Dear Assembly Member Campos:

On behalf of the thirty-four member counties of the Rural County Representatives of California (RCRC) and the twelve member counties of the Urban Counties Caucus (UCC), it is with regret that we inform you of our continued opposition to your Assembly Bill 194 which would negate any action taken by a local legislative body if that action was taken in accordance of curtailing public comment/public criticism associated with our state's open meeting laws (commonly referred to the Brown Act).

Under California's Brown Act, county boards of supervisors must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. This section of the Brown Act specifically references a prohibition of a legislative body from curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and provide comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. Two years ago, this area of law was strengthened with the enactment of SB 1003 (Yee) which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated. This serves as a strong and expensive disincentive to local public agencies towards violating the Brown Act.

We are troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed or public comment was not allowed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

We appreciate the time your staff has dedicated to discussions involving AB 194 as we explore possible revisions to the Brown Act and its public comment/public criticism provisions. Nevertheless, we remain convinced that current law provides members of the public plenty of options if they believe their 1st Amendment rights have been violated or their ability to offer comment/criticism was breached. For these reasons, we remain strongly opposed to AB 194.

If you have any questions or concerns regarding our position, please do not hesitate to contact Paul A. Smith of RCRC at 916-447-4806 and/or Jolena Voorhis of UCC at 916-327-7531.

Sincerely,

Paul A. Smith
Senior Legislative Advocate
RCRC

Jolena L. Voorhis
Executive Director
UCC

cc: Each Member and Consultant, of the Assembly Local Government Committee

City of Thousand Oaks

City Council

2100 Thousand Oaks Boulevard • Thousand Oaks, CA 91362
Phone 805/449.2121 • Fax 805/449.2125 • www.toaks.org

Claudia Bill-de la Peña
Mayor

April 15, 2013

Honorable Norma Campos
California State Assembly
Capitol Building #3013
Sacramento, CA 95814

Fax: (916) 319-2130

RE: AB 194 (CAMPOS) BROWN ACT VIOLATION- MISDEAMEANOR - OPPOSE

Dear Assemblymember Campos:

On behalf of the City of Thousand Oaks, I regret to inform you of our opposition to AB 194, which would make it a misdemeanor for member of a legislative body, while acting as the chairperson, to prohibit criticism of the public agency. The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act prohibits a legislative body of a local agency from preventing public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body, as specified.

The City of Thousand Oaks recognizes that it is the public's right to attend public meetings and share criticism or concerns over a public agency's policies, programs, services, etc. The public's right even extends beyond public meetings and takes the shape of letters, emails, voicemails, editorials, etc. Public comment shapes and strengthens public agencies and promotes transparency, while encouraging public involvement.

Although we understand the intent of AB 194, it criminalizes the rare occasion when the meeting chair/mayor has to take control of rude, unruly, and/or violent behavior that threatens meeting protocol and public safety. Routinely, public agencies review various controversial and difficult issues in a public forum that are met with emotional, and sometimes hostile, responses from the public. The City of Thousand Oaks often televises these meetings live on its government channel and even streams them online. It is the job of the meeting chair or in the City's case, the Mayor, to serve as the meeting facilitator and run the meeting in an orderly fashion. In stating their criticism, however, is not uncommon for members of the public to use *profane language, personal insults of elected officials or staff*, or even *verbal threats*

of physical harm directed to an elected member, staff, or another member of the public. On these occasions, the mayor would react by hastening the speaker, *interrupting their comments, turning off their microphone, or even having them escorted from the meeting.* This by no means is a matter of inhibiting public criticism but asserting decorum and precaution for public safety.

The City of Thousand Oaks upholds the freedom and right of any member of the public to speak, not however, at the cost of public turmoil and violence.

Sincerely,

Claudia Bill-de la Peña
Mayor

c: Fran Pavley, Senator
Jeff Gorell, Assemblymember
League of California Cities
Joe A Gonsalves and Son

CMO:660-40/Council Correspondence/Bill-de la Peña/04 18 2013 Letter of Opposition AB 194.doc

County Executive
Bradley J. Hudson

County of Sacramento

March 15, 2013

The Honorable Nora Campos
California State Assembly
State Capitol Room 3013
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos): New Misdemeanor for Brown Act Violation—OPPOSE

Dear Assembly Member Campos:

On behalf of the Sacramento County Board of Supervisors, I write to express the Board's opposition to your AB 194 which makes it a misdemeanor under the Ralph M. Brown Act for the chair of a local legislative body to prohibit public criticism. The bill also permits a district attorney or an individual to file a lawsuit to void any action the local legislative body takes in violation of the law governing public criticism.

The Brown Act already prohibits a local legislative body from prohibiting public criticism of local policies, procedures, programs, or services. We believe this prohibition is sufficient and that creating a misdemeanor is not justified. Public expression of contrary views in a public meeting is the foundation of the Brown Act. County officials, staff, and members of the public who may be serving on a local legislative body take their responsibility to carry out this provision in the Brown Act seriously.

In conclusion, we believe that current law is sufficient and AB 194 is not needed. If you need further information, I can be reached at 916-874-4627 or at enderton-speedl@saccounty.net.

Sincerely,

Laura Enderton-Speed
Governmental Relations and Legislative Officer
County of Sacramento

Cc: Members and Consultants, Assembly Local Government Committee

URBAN COUNTIES CAUCUS
URBAN COUNTIES CAUCUS
1100 K Street, Suite 101
Sacramento, CA 95814
(916) 327-7531

RURAL COUNTY REPRESENTATIVES OF CALIFORNIA
1215 K Street, Suite 1650
Sacramento, CA 95814
(916) 447-4806

March 21, 2013

The Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: Assembly Bill 194 (Campos) – OPPOSE

Dear Assembly Member Campos:

On behalf of the thirty-two member counties of the Rural County Representatives of California (RCRC) and the twelve member counties of the Urban Counties Caucus (UCC), it is with great regret that we inform you of our opposition to your Assembly Bill 194 which would subject individual members of a legislative body to a misdemeanor for violating a portion our state's open meeting laws (commonly referred to the Brown Act).

Under California's Brown Act, local agency governing boards (e.g., a county board of supervisors) must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. This section of the Brown Act specifically references a prohibition of a legislative body from curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) of last year which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

To be frank, we see no reason for subjecting an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency, and ensures that only conscious scofflaws are threatened with criminal prosecution. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

We are troubled by AB 194, as it will have a chilling effect on any attempt to enforce reasonable regulations for public comment (which are expressly authorized by the Brown Act). Simply put – any public comment, even if critical, can be limited in accordance with content-neutral rules (such as individual or aggregate time limits). Any time that critical comment is curtailed, the speaker may charge that the critical content of their speech was a motivating factor – a charge that depends on subjective perception, and may be difficult to disprove. If those that chair public meetings are faced with criminal prosecution arising from such disputes, they will inevitably show great reluctance in expediting the agenda for fear of crossing the fine line between reasonable regulation and impermissible prohibition of "criticism".

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

Again, current law provides members of the public plenty of options if they believe their 1st Amendment rights have been violated or their ability to offer comment/ criticism was breached. For these reasons, we are strongly opposed to AB 194.

If you have any questions or concerns regarding our position, please do not hesitate to contact Paul A. Smith of RCRC at 916-447-4806 and/or Jolena Voorhis of UCC at 916-327-7531.

Sincerely,

Paul A. Smith

PAUL A. SMITH
Senior Legislative Advocate

JOLENA VOORHIS
Executive Director

cc: Members of the Assembly Local Government Committee

LEAGUE OF CALIFORNIA CITIES
1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

April 17, 2013

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: AB 194 (Campos) Local Government. Open Meetings. *(As introduced)*
Hearing Date: April 24, 2011 – Assembly Local Government Committee
Notice of Opposition

Dear Assembly Member Campos:

On behalf of League we regrettably must oppose your AB 194. Your measure would make it a misdemeanor for a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act.

First, the law already explicitly provides that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [GC. 54954.3]. The chairperson (most likely the mayor) cannot stop a speaker because he or she disagrees with the viewpoints of the speaker.

Additionally, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. A local legislative body may establish rules for the conduct of its proceedings. However, these rules must preserve constitutional rights and be reasonable and not arbitrary and capricious.

This authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

The law clearly provides protections for individuals exercising constitutional rights to petition their government and exercise freedom speech. Local legislative bodies are empowered with the authority to maintain conduct and keep order, but must balance that against an individual's rights.

Further, the Brown Act clearly provides the public the right to address a city council or other legislative body at regular and special meetings [GC. 54950-54963]. A legislative body is

permitted to limit public comment to matters that serve the purpose to which council holds meetings. However, the courts balance the right of the public to address the legislative body with the need to ensure that public comment does not unduly disrupt the orderly conduct of the meeting. Here the Brown Act represents a balance that calls for openness and allows government to function responsively and productively.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment or criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee; 2012) which implements a formal process to address past violations of the Brown Act. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

This measure seems heavy handed in light of the remedies available to the public. AB 194 subjects an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

For these reasons, the League must regrettably oppose AB 194. If you have any questions or concerns regarding our position, please do not hesitate to contact me at 916-658-8254.

Sincerely,

Natasha M. Karl

Natasha M. Karl
Legislative Representative

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

California Special
Districts Association
CSDA
Districts Stronger Together

April 16, 2013

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
State Capitol Building
Sacramento, CA 95814

RE: **Assembly Bill 194 (Campos) – Notice of Opposition [As introduced]**
Hearing Date: April 24 – Assembly Local Government Committee

Dear Assembly Member Achadjian:

The California Special Districts Association (CSDA), representing over 1,000 special districts and affiliate organizations, regrets to inform you of our opposition to Assembly Bill 194, related to public criticism directed at local legislative bodies. Unfortunately, AB 194 would unnecessarily hinder special district boards' ability to conduct business on behalf of the millions of Californians who rely on them for core local services such as water, sanitation, fire protection, and healthcare.

CSDA fully supports and encourages public participation and engagement with their local government agencies and elected officials. Unfortunately, AB 194 would detract from, rather than promote, this practice. The bill provides that if a chair of the local legislative body prohibits public criticism of the policies, procedures, programs, or services of the agency or of the acts or omissions of the legislative body, that individual shall be guilty of a misdemeanor. Current law already provides protection for this type of speech, a violation of which is an infraction. In addition, AB 194 adds the entire current Government Code Section 54954.3, related to public comment, to the existing list of Brown Act laws subject to "cure and correct" penalties. This creates a set of circumstances that is unproductive not only to the local legislative body but also public participation.

A key duty of the chair is to ensure the orderly conduct of business. However, under AB 194, their hands would be tied in regulating abusive or threatening comments to avoid the threat of *criminal* charges for failing to adhere to procedural requirements. The chair would also be reluctant to cut-off a person who exceeded the designated time allotment or spoke out of turn, thus delaying others' opportunity to offer comments and participate in the public meeting. Finally, we are concerned that the provisions of this measure would have a chilling effect on volunteerism. Individuals may be hesitant to get involved and lead local boards, committees, councils, commissions, or advisory bodies in light of the potential severe or costly repercussions for any error or omission, however slight.

For these reasons, CSDA respectfully opposes AB 194. Please do not hesitate to contact me if you have any questions regarding our position at (916) 442-7887.

Sincerely,

Dorothy Holzem
Legislative Representative

cc: The Honorable Nora Campos
Members, Assembly Local Government Committee
Angela Mapp, Consultant, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

California Special Districts Association
1112 I Street, Suite 200
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A proud California Special Districts Alliance partner

Special District Risk Management Authority
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toll-free: 800 [illegible] 7790
t: 916.231.4111

CSDA Finance Corporation
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CALIFORNIA ASSOCIATION OF
CLERKS AND ELECTION OFFICIALS

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Santa Cruz County Clerk
701 Ocean St., Room 210, CA 95060
831-454-2419 * Fax 831-454-2445 * Cell 408-316-9745
E-Mail: gail.pellerin@co.santa-cruz.ca.us
Website:www.caceo58.org

March 18, 2013

The Honorable Nora Campos
California State Assembly
State Capitol, Room 3013

Re: Assembly Bill 194 (Campos), re: Open Meetings: Protections for public criticism: penalties
California Association of Clerks and Election Officials...OPPOSE

Dear Assemblymember Campos:

The California Association of Clerks and Election Officials (CACEO) opposes your Assembly Bill 194, which would provide that if a member of a legislative body, while acting as the chairperson of the body, prohibits public criticism of the policies, procedures, programs, or services of the agency or of the acts or omissions of the legislative body, that individual shall be guilty of a misdemeanor. The measure is currently awaiting a hearing in the Assembly Local Government Committee.

CACEO believes the bill may encourage members of the public who might object to reasonable time limits to public comment to initiate court actions against the chairperson of a board of supervisors. Current law already makes a violation of subdivision (c) of Government Code 54954.3 (regarding the public's right to criticize a legislative body) an infraction. Making a violation of this subdivision a criminal misdemeanor is unreasonable and represents legislative overkill. The line between legitimate, protected criticism of a legislative body and personal abuse is a very gray one. If AB 194 were to be enacted, when a member of the public became abusive, a chairperson would be very reluctant to cut off that public comment when time had expired no matter how abusive or offensive. Thus, the bill would also be an invitation for people to verbally and personally abuse the members of the body, which would not only be offensive, it would waste large amounts of the legislative body's time.

The bill also presents an obstacle to persuading citizen volunteers who serve on county commissions and committees to serve as chairperson of their respective legislative bodies once they become aware that they could, through some innocent error on their part, become the subject of criminal prosecution. Without a chairperson, these legislative bodies could not function.

Existing law permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections contained in the Brown Act. AB 194 would amend Section 54960.1 to add any violation of Section 54954.3 regarding public comment -- not just subdivision (c) dealing with criticism of a legislative body – to the list of Brown Act sections subject to such legal actions.

Making any alleged violation of Section 54954.3 subject to this process potentially would subject a board of supervisors and other county boards, committees and commissions to additional costly litigation brought by any person. For example, a person could file a court action any time he/she believed these other legislative bodies -- which number in the thou-

sands around the state -- failed to adopt "reasonable regulations" that allow the public to "directly address the legislative body on any item of interest to the public."

Our members believe that the safeguards already contained in the Brown Act are sufficient.

CACEO urges you to consider the Association concerns with AB 194 before moving forward.

Sincerely,

Matt Siverling
Legislative Advocate, CACEO

CC: Each Member and Consultant, Assembly Local Government Committee

CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

GAIL L. PELLERIN, PRESIDENT
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Website:www.caceo58.org

April 8, 2013

The Honorable Katcho Achadjian
Assembly Local Government Committee
State Capitol, Room 4098

Re: Assembly Bill 194 (Campos), re: Open Meetings: Public criticism: penalties

Dear Assemblymember Achadjian:

The California Association of Clerks and Election Officials (CACEO) opposes Assembly Bill 194, which would provide that if a member of a legislative body, while acting as the chairperson of the body, prohibits public criticism of the policies, procedures, programs, or services of the agency or of the acts or omissions of the legislative body, that individual shall be guilty of a misdemeanor. The measure is scheduled for a hearing in your Assembly Local Government Committee on April 24, 2013.

CACEO believes the bill may encourage members of the public who might object to reasonable time limits to public comment time limits to initiate court actions against the chairperson of a board of supervisors. Current law already makes a violation of subdivision (c) of Government Code 54954.3 (regarding the public's right to criticize a legislative body) an infraction. Making a violation of this subdivision a criminal misdemeanor is unreasonable. If AB 194 were to be enacted, when a member of the public became abusive, a chairperson would be very reluctant to cut off that public comment when time had expired no matter how abusive or offensive. Thus, the bill would also be an invitation for people to verbally and personally abuse the members of the body, which would not only be offensive, it would waste large amounts of the Board's time.

The bill also presents an obstacle to persuading citizen volunteers who serve on county commissions and committees to serve as chair of their respective legislative bodies once they become aware that they could, through some innocent error on their part, become the subject of criminal prosecution. Without a chairperson, these legislative bodies could not function.

Existing law permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections contained in the Brown Act. AB 194 would amend Section 54960.1 to add any violation of Section 54954.3 regarding public comment -- not just subdivision (c) dealing with criticism of a legislative body – to the list of Brown Act sections subject to such legal actions.

Making any alleged violation of Section 54954.3 potentially would subject a board of supervisors and other county boards, committees and commissions to additional costly litigation brought by any person. For example, a person could file a court action any time he/she believed these other legislative bodies -- which number in the thousands around the state -- failed to adopt "reasonable regulations" that allow the public to "directly address the legislative body on any item of interest to the public."

CACEO urges your "no" vote on AB 194.

Sincerely,

Matt Sterling

CC: Each Member and Consultant, Assembly Local Government Committee
The Honorable Nora Campos

Association of
California Water Agencies
Since 1910

April 16, 2013

The Honorable Katcho Achadjian
Assembly Committee on Local Government
State Capitol, Room 4098
Sacramento, CA 95814

Re: Assembly Bill 194 (Campos) - OPPOSE

Dear Chair Achadjian:

On behalf of the Association of California Water Agencies (ACWA), I am writing to express ACWA's opposition to AB 194 (Campos) regarding public criticism at open meetings.

AB 194 would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. This bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void.

ACWA members are concerned that the language in AB 194 is vague and ambiguous. It is very unclear what would be considered a violation of a person's right to publicly criticize a local board. As is the case with the state legislature, not all decisions taken by local public agency boards are popular ones. Often it is the unpopular decisions that are the most contentious, for both board members themselves and constituents; but also, the most needed for the reliability of the service provided. Unfortunately, the best attended meetings are the contentious meetings, and time management is of the essence. Without time limits for comments, many of those meetings would be unmanageable, going far into the night. AB 194 would allow anyone who decides that they weren't afforded all the time they thought they should have to "publicly criticize" the local agency board to bring an action against the chair.

In addition, agency board members are volunteers, elected to office from the community, and for the most part, not paid very much for their service. Adding these punitive penalties, as proposed by AB 194, would make the prospect of volunteering to serve one's community a tenuous proposition.

For the aforementioned reasons, ACWA opposes AB 194 and requests your "NO" vote when the bill is heard in the Assembly Local Government Committee on April 24, 2013.

Sincerely,

Whitnie Wiley
Legislative Advocate

WW:aa

cc: The Honorable Nora Campos
Members, Assembly Committee on Local Government
Debbie Michel, Chief Consultant, Assembly Committee on Local Government
William Weber, Consultant, Assembly Republican Caucus

COUNTY OF LOS ANGELES
Sacramento Legislative Office
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WILLIAM T FUJIOKA
Chief Executive Officer

ALAN FERNANDES
Chief Legislative Representative

April 15, 2013

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos), As Introduced – OPPOSE
Relating to the Brown Act
Set April 24, 2013 in Assembly Local Government Committee

Dear Assembly Member Achadjian:

The Los Angeles County Board of Supervisors opposes AB 194 (Campos).

The Brown Act requires that all meetings of a local legislative body be open and public, permitting all persons to attend and participate. The Act allows local agencies to establish reasonable rules to manage and conduct public comment, determining the time, place, and manner restrictions are permissible.

AB 194 makes it a misdemeanor for a member of a legislative body, while acting as a chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act. It authorizes a district attorney to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void.

The Los Angeles County Executive Office of the Board has determined that AB 194 could significantly impact the Board of Supervisors and Executive Office by encouraging members of the public to file court actions against the Chair of the Board of Supervisors, as well as the chairs for the dozens of County commissions and committees.

Therefore, I request your "NO vote on AB 194. If you have any questions, please contact me at 916-441-7888.

Sincerely,

Ed Berends
Legislative Representative

C: Assembly Member Nora Campos
Each Member and Consultant, Assembly Local Government Committee

County of Tulare

April 2, 2013

The Honorable Nora Campos
Assembly Speaker Pro Tempore
State Capitol, 2175
Sacramento, CA 95814

RE: Opposition to AB 194 (Campos)

Dear Assembly Member Campos:

The County of Tulare regrets to inform you of our opposition to AB 194 which would make it a misdemeanor for a member of a legislative body of a local agency to prohibit public criticism protected under the Brown Act.

Existing law makes violation of subdivision (c) of Section 54954.3 an infraction. Existing law also permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Brown Act.

We are concerned that AB 194 would encourage court actions against chairpersons of various county commissions and committees that might ultimately result in a criminal prosecution, even where the chairperson tried to correctly apply the provisions of 54954.3(c). We also believe that this bill would encourage increased litigation under Section 54960.1 by adding violations of all of the provisions contained in Section 54954.3 to the list of sections of the Brown Act for which a district attorney or any interested person may commence a court action to correct.

Additionally, we are concerned that AB 194 would strongly discourage citizen volunteers from agreeing to serve as chairpersons of various county committees and commissions once they discover that they might be subject to criminal prosecution should they violate subdivision (c) of Section 54954.3.

For these reasons, the County of Tulare opposes this legislation. Should you have any questions or concerns, please contact Jean M. Rousseau, County Administrative Officer at (559) 636-5005 or jrousseau@co.tulare.ca.us.

Sincerely,

Pete Vander Poel, Chairman
Tulare County Board of Supervisors

Phillip A. Cox, Vice-Chairman
Tulare County Board of Supervisors

J. Steven Worthley, District Four
Tulare County Board of Supervisors

Mike Ennis, District Five
Tulare County Board of Supervisors

Allen Ishida, District One
Tulare County Board of Supervisors

cc:
Senator Jean Fuller
Assembly Member Connie Conway

Administration Bldg.
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BOARD OF SUPERVISORS

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County Administrator
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April 17, 2013

The Honorable Katcho Achadjian
California State Assembly, District 35
Chair, Assembly Local Government Committee
State Capitol Building, Room 4098

Re: **Assembly Bill 194 (Campos) – OPPOSE**
Open meetings: protections for public criticism: penalties for violations

Dear Chair Achadjian:

On behalf of the Solano County Board of Supervisors I respectfully request that you OPPOSE AB 194 (Campos) when it is heard in your committee on Local Government on April 24th. This bill would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body or local agency, to prohibit public criticism protected under the Ralph M. Brown Act (Brown Act).

AB 194 contains no stipulation that the chairperson of a legislative body of a local agency who acted to prohibit public criticism did so with the willful intent to deprive the public of information to which it is entitled. The lack of this requirement will unnecessarily expose members of local government to criminal prosecution and high legal costs for actions that were not purposefully intended to violate the law. It would also place a nearly impossible burden of proof that intent to violate the law did not exist.

Local governments across this state already have limited resources. They can ill afford to be used fending off lawsuits brought about by this legislation. Given the significant challenges counties are facing at this time, we believe that the State should be looking to limit opportunities to sue, rather than encouraging them.

Aside from the potential legal ramifications, this bill would significantly affect a local government's ability to effectively and efficiently conduct public business. AB 194 would restrict a chairperson's ability to place reasonable time limits on public comment since it would allow for a speaker to easily charge that such restrictions were applied to prohibit public criticism.

Solano County supports open meetings and the right of the public to comment on issues and criticize various policies and procedures. However, we believe that current law already provides significant legal remedies for individuals who allege a Brown Act violation. AB 194 would simply hamper local governments' ability to conduct public business and unnecessarily subject local legislative bodies to costly criminal prosecution.

For these reasons, I would like to again respectfully urge that you **OPPOSE AB 194** when it is heard in your committee.

Sincerely,

Linda J. Seifert, Chair
Solano County Board of Supervisors

Cc: The Honorable Members of the Assembly Local Government Committee
Assembly Local Government Committee Consultants
The Honorable Mariko Yamada, Assembly District 4
The Honorable Susan Bonilla, Assembly District 14
The Honorable Lois Wolk, Senate District 3
Paul Yoder, Partner, Shaw / Yoder / Antwih Inc.

MAY 15 2013

City Of Camarillo

601 Carmen Drive • P.O. Box 248 • Camarillo, CA 93011-0248

Office of the City Manager
(805) 388-5307
Fax (805) 388-5318

May 9, 2013

The Honorable Nora Campos
California State Assembly
State Capitol, Room 3013
Sacramento, CA 94249

RE: Opposition to AB 194 (Campos) – Open Meetings: Protections for Public Criticism: Penalties for Violations

Dear Assembly Member Campos:

On behalf of the City of Camarillo, I would like to respectfully express our opposition to AB 194. This bill would make it a misdemeanor for a member of a legislative body of a local agency to prohibit public criticism protected under the Ralph M. Brown Act (Act).

Existing law makes violation of subdivision (c) of Section 54954.3 an infraction. Existing law also permits the district attorney or any interested person to commence an action by mandamus or injunction to obtain a judicial determination that an action taken by a legislative body violated certain sections of the Act.

Camarillo is concerned that AB 194 would encourage court action against chairpersons of various legislative bodies and committees that may ultimately result in criminal prosecution, even where the chairperson made every effort to correctly apply the provisions of 54954.3 (c). Additionally, we believe that this bill would encourage increased litigation under Section 54960.1 by adding violations of all the provisions contained in Section 54954.3 to the list of sections of the Act for which a district attorney or any interested person may commence a court action to correct.

Lastly, we are concerned that this bill would strongly discourage citizen volunteers from agreeing to serve as chairpersons of various local government committees and commissions once they discover that they may be subject to criminal prosecution should they violate subdivision (c) of Section 54954.3.

For these reasons, the City of Camarillo respectfully opposes AB 194. Thank you for your consideration of the City's position on this important matter.

Sincerely,

Bruce Feng
City Manager

cc: Camarillo City Council
California Contract Cities Association
Gonsalves & Son
League of California Cities

Reeb Government Relations, LLC

April 17, 2013

The Honorable Katcho Achadjian
Chairman, Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, California 95814

RE: Assembly Bill No. 194 (Campos) – Oppose Unless Amended

Dear Assemblymember Achadjian:

I am writing on behalf of El Dorado Irrigation District (EID) to express opposition to AB 194 (Campos), relating to local government.

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency to be open and public and that all persons be permitted to attend and participate. Current law prohibits a legislative body of a local agency from preventing public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body, as specified. AB 194 would make it a misdemeanor for a member of a legislative body, while acting as the chairperson, to prohibit public criticism protected under the act. The bill would authorize a district attorney or any interested person to commence an action for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of the protection for public criticism is null and void, as specified.

EID believes the creation of a misdemeanor moves beyond the current scope of enforcement under existing law, and would not allow a local agency to cure the action by which critical speech was prohibited. Further, by creating a new crime relating to the conduct of a local agency meeting, a member of the legislative body acting as chairperson might be restrained from maintaining proper decorum in the meeting for fear of criminal sanction should he or she cut off a speaker. While a member of the public has a legal right to criticize the local agency, he or she does not have a right to speak in a threatening or abusive manner. Typically, if public participation in a meeting rises to a level that threatens the safety of those in attendance or disrupts the meeting to the extent that proceedings cannot continue, the meeting must be recessed, adjourned or in limited cases, the person creating the disruption must be escorted from the meeting room. Local agency presiding officers must have the flexibility to ensure proper decorum in a public meeting. The misdemeanor provision in AB 194 would unnecessarily interfere with that function.

1107 9th Street, Suite 510
Sacramento, California 95814

(916) 558-1926 PH
(916) 558-1932 FAX

The District believes the more appropriate course of action, which is included in AB 194, is to add a violation of Section 54954.3 to the provisions of Section 54960 that will enable a court to declare the action related to the agenda item to be null and void.

Absent the deletion of the misdemeanor provision, EID respectfully requests a "NO" vote on AB 194. Thank you for your time and consideration.

Sincerely,

Robert J. Reeb

RJR:ra

Cc: The Honorable Nora Campos
Members and Consultant, Assembly Local Government Committee
Assembly Republican Office of Policy
Office of the Governor
Association of California Water Agencies

1100 K Street
Suite 101
Sacramento
California
95814

Telephone
916.327-7500
Facsimile
916.441.5507

April 17, 2013

The Honorable Katcho Achadjian
Chair, Assembly Local Government Committee
1020 N Street, Room 157
Sacramento, CA 95814

RE: AB 194 (Campos) – Open meeting; protections for public criticism: penalties for violations.
As Introduced 1/28/13 – OPPOSE
Set for hearing April 24, 2013 – Assembly Local Government Committee

Dear Assembly Member Achadjian:

The California State Association of Counties must regretfully oppose Assembly Bill 194, by Assembly Member Nora Campos, which would make it a misdemeanor for a member of a legislative body, while acting as the chairperson of a legislative body of a local agency, to prohibit public criticism protected under the Ralph M. Brown Act (Brown Act).

Current law states that a member of a legislative body who attends a meeting of that body where action is taken in violation of any provision of the Brown Act 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 is guilty of a misdemeanor. The Brown Act additionally prohibits members of a legislative body from disallowing public criticism of the policies, procedures, programs, or services of the legislative body. The intent of this language is consistent with the Brown Act's overarching goal of transparency and ensures the public's right to information.

AB 194 contains no stipulation that the chairperson of a legislative body of a local agency who acted to prohibit public criticism did so with the willful intent to deprive the public of information to which it is entitled. This lack of a requirement that the action be an overt act from which criminal intent can be inferred will expose members of local government agencies to unnecessary criminal prosecution and soaring legal bills for actions that were not purposefully intended to violate the law. AB 194 would also place on the chairperson a nearly impossible burden of proof that intent to violate the law did not exist.

Also permitted by the Brown Act is the ability for legislative bodies to adopt the requirement that public comment be content-neutral and to apply reasonable time periods for public comment. In fact, it was concluded by the Attorney General (75 Ops.Cal.Atty.Gen. 89 (1992)) that five minutes per speaker is a reasonable time period by which to limit public testimony for local public agency meetings; in *Chaffee v. San Francisco Public Library Commission* (134 Cal.App.4th 109), it was determined by the court that limiting public comment to two minutes per speaker was not a Brown Act violation. AB 194, however, would limit the chairperson's ability to place reasonable time limits on public comment for the purpose of ensuring the timely conduction of public business since a speaker may easily charge that such restrictions were applied due to the content of their comments.

County agencies conduct public business cognizant of the responsibility to ensure transparency and public access to information. As such, we support open meetings and the right of the public to comment on issues and criticize various county policies and procedures. However, we believe that current law provides sufficient legal remedies for individuals who allege a Brown Act violation and

3013
Campos

do not support reducing the ability for counties to effectively conduct county business or subjecting members of local agency legislative bodies to criminal prosecution for what may be unintentional actions. For these reasons, CSAC opposes AB 194. If you need additional information regarding our position on this measure, please do not hesitate to contact me at 916-650-8180 or eortega@counties.org

Sincerely,

Eraina Ortega

Eraina Ortega
Senior Legislative Representative

cc: The Honorable Norma Campos, California State Assembly
Members and Consultant, Assembly Local Government Committee

CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141

January 8, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos) – OPPOSE - Withdrawn

Dear Assemblymember Achadjian:

The California Association of Sanitation Agencies (CASA) had previously taken an "Oppose" position on AB 194 (Campos), which relates to actions for violations of the Brown Act during meetings of local legislative bodies.

Upon further review and discussion by our Legislative Committee, CASA has decided to withdraw our formal opposition and instead has taken a "Disapprove" position, which under our internal guidelines, does not warrant registering a position with the policy committee.

If you have any questions related to our position on this legislation, please feel free to contact me at (916) 448-2196.

Sincerely,

JESSICA GAUGER
CASA Lobbyist

CC: Committee Consultants
The Honorable Nora Campos

CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2280 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141

January 7, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: AB 194 (Campos) – OPPOSE

Dear Assemblymember Achadjian:

The California Association of Sanitation Agencies (CASA) has taken an "Oppose" position on AB 194 (Campos), which relates to actions for violations of the Brown Act during meetings of local legislative bodies. CASA is a statewide association of municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, water recycling and biosolids management services to millions of Californians. All of our agencies are overseen by locally elected governing boards who comply with all existing laws relative to open meetings under the Brown Act.

AB 194 expands existing law to allow a District Attorney or interested party to seek judicial determination that an action taken by a legislative body is null and void if the legislative body violated certain provisions of the Act pertaining to public comment periods. CASA believes that under existing law, interested parties have sufficient means to seek remediation for violations of the Brown Act, including in cases of public comment, which is critical in nature, being limited by a legislative body. Expanding this section could have a significant impact on an individual agencies' flow of business, and limits the Board Chair's ability to manage the productive dialogue between the Board and interested parties during a public hearing. Finally, expanding this section could potentially incentivize disruptive behavior during public comment periods.

For these reasons, CASA must respectfully oppose AB 194. If you have any questions related to our position on this legislation, please feel free to contact me at (916) 448-2196.

Sincerely,

JESSICA GAUGER
CASA Lobbyist

CC: Committee Consultants
The Honorable Nora Campos

City of Downey

FUTURE UNLIMITED

Downey All-America City 2013

January 27, 2014

The Honorable Nora Campos
Member, California State Assembly
State Capitol Building, Room 3013
Sacramento, CA 95814

RE: AB 194 (Campos) Local Government. Open Meetings – Notice of Opposition

Dear Assembly Member Campos:

As Mayor of the City of Downey, I regret to inform you of our opposition to AB 194, as amended on January 6th. This measure would unnecessarily hinder the ability of local governments to conduct business and exercise reasoned judgment on matters of public importance.

The proposed amendment would remove the misdemeanor penalty for a member of a legislative body to prohibit public criticism protected under the Ralph M. Brown Act. But, the bill still allows a court to determination that a decision taken by a legislative body or local agency in violation of the Brown Act is null and void. This is a disruptive approach that distorts an existing provision of the Brown Act that was intended only to preclude governing bodies from holding secret proceedings.

Current law already explicitly specifies that a city council or other legislative body may not prohibit public criticism of the policies, procedures, programs, or services of an agency or its acts or omissions [Government Code Section 54954.3]. Furthermore, local agency governing bodies must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. Rules may be established for the proceedings, but these rules must preserve constitutional rights and be reasonable.

The authority given to local governing bodies to establish rules of procedure is limited by constitutional rights and case law requiring that they be reasonable. Additionally, the Brown Act is intended to ensure the full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effectiveness and natural operation of government.

We remain deeply troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens a new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. This will cause unavoidable disruption in the full execution of many actions undertaken by legislative bodies statewide.

If you would like to contact me regarding this issue, please call me at (562) 904-7474.

Sincerely,

CITY OF DOWNEY

Fernando Vasquez
Mayor

FV:sc

cc: Chair and Members, Assembly Local Government Committee
Angela Mapp, Assembly Local Government Committee
William Weber, Consultant, Assembly Republican Caucus

H:\CCouncil\LettersofOpposition\AB194-BrownAct-Assy.Mem.Campos-1-27-14

OFFICE OF THE
CITY COUNCIL

JAY SCHENIRER

COUNCILMEMBER
DISTRICT FIVE

CITY OF SACRAMENTO
CALIFORNIA

January 10, 2014

Honorable Nora Campos
Member of the State Assembly
State Capitol, Room 3013
Sacramento, CA 95814

RE: ASSEMBLY BILL 194 (CAMPOS) – OPPOSE

Dear Assembly Member Campos:

On behalf of the City of Sacramento, we regret to inform you of our opposition to your Assembly Bill 194 which would subject individual members of a legislative body to a misdemeanor for violating a portion of our state's open meeting laws, commonly referred to the Brown Act.

Under California's Brown Act, local agency governing boards (e.g., a city council) must adhere to a variety of requirements including the allowance of individuals to provide public comment on items for consideration. The Brown Act specifically references a prohibition of a legislative body for curtailing criticism by members of the public. These requirements have been put in place in order for the public to access the proceedings and comment on the actions of their local government agencies.

For decades, individuals have had and continue to have the ability to pursue litigation over an allegation that a local agency violated the Brown Act, including curtailing public comment/criticism. More recently, this area of law was strengthened with the enactment of SB 1003 (Yee) of last year which enacts a process for bringing forth allegations of "past" Brown Act violations. In each of these legal avenues, the ability to collect attorney's fees and other legal costs can be recovered by the plaintiff if the violations are substantiated.

We see no reason for subjecting an individual (most likely the member of the legislative body who is acting as chair) to criminal penalties for violation of this provision. The current provisions of the Brown Act impose criminal liability sparingly – only where a member intentionally withholds information from the public that he or she knows or should have known that the public was entitled to. This is consistent with the Brown Act's central goal of transparency, and ensures that only conscious scofflaws are threatened with criminal prosecution. AB 194 lacks these safeguards, and potentially subjects elected officials to criminal penalties based on misunderstandings, differences of opinion, or other actions that were not purposefully intended to violate the law.

915 I STREET 5th FLOOR, SACRAMENTO, CA 95814-2604
PH 916-808-7005 • FAX 916-264-7680 • jschenirer@cityofsacramento.org

We are troubled by AB 194, as it will have a chilling effect on any attempt to enforce reasonable regulations for public comment such as the time limits for speakers.

We are equally troubled by AB 194's provisions which would nullify an action of a local agency if – during the discussion of that item – a person's criticism was curtailed. The "null and void" provisions of the Brown Act exist primarily to set aside public decisions made in a secret and undisclosed manner, for which no other effective remedy exists. Unfortunately, AB 194 opens this new avenue to challenge virtually any controversial public decision, in which any speaker can contend that their ability to comment was curtailed for the wrong reason. Local governments cannot afford additional frivolous lawsuits.

If you have any questions or concerns regarding our position, please do not hesitate to contact Randi L. Knott, Intergovernmental Relations Officer at 916-808-5771.

Sincerely,

Jay Schenirer
Chair, Law and Legislation Committee

cc: Honorable Darrell Steinberg
Honorable Roger Dickinson
Honorable Dr. Richard Pan
Members of the Assembly Local Government Committee

COUNTY OF LOS ANGELES
Sacramento Legislative Office
1100 K Street, Suite 400, Sacramento, California 95814
(916) 441-7888 - Fax (916) 445-1424
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

ALAN FERNANDES
Chief Legislative Representative

January 14, 2014

The Honorable Katcho Achadjian, Chair
Assembly Local Government Committee
State Capitol, Room 4098
Sacramento, CA 95814

RE: **AB 194 (Campos), As Amended on January 6, 2014 – OPPOSE**
Relating to the Brown Act
Set January 15, 2014 in Assembly Local Government Committee

Dear Assembly Member Achadjian:

The Los Angeles County Board of Supervisors opposes AB 194 (Campos).

The Ralph M. Brown Act (Brown Act) requires, with specified exceptions, that all meetings of a local legislative body be open and public, permitting all persons to attend and participate. The Brown Act allows local agencies to establish reasonable rules to manage and conduct public comment, determining the time, place, and manner in which restrictions for public comment are permissible.

AB 194 would expand the authorization of a district attorney or interested party to ask a court to determine that an act by a legislative body is null and void if that body violated the requirement to provide members of the public an opportunity for comment or criticism.

The Los Angeles County Executive Office of the Board has determined that AB 194 could significantly impact the Board of Supervisors and the Executive Office by encouraging members of the public to file court actions against the Board of Supervisors, as well as against the dozens of County commissions and committees. For example, pursuant to AB 194, a person could file a court action at any time he or she believed a legislative body failed to adopt reasonable regulations that allowed the public to directly address the legislative body on any item of public interest. As a result, a local body may be unable to move forward with critical and time-sensitive items until the court issued a decision.

For this reason, I respectively request your "NO vote on AB 194. If you have any questions, please contact me at (916) 441-7888.

Sincerely,

Stephen Kawamura
Legislative Representative

C: Assembly Member Nora Campos
Each Member and Consultant, Assembly Local Government Committee

"To Enrich Lives Through Effective And Caring Service"

RETURN IMMEDIATELY

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
KATCHO ACHADJIAN, CHAIR

MEASURE: AB 194
AUTHOR: Assemblymember Campos

STAFF CONTACT: Larry Sokol
PHONE: 319-2975 (direct)
319-2027 (main)

NOTE: To allow adequate time for committee staff to analyze the bill, all committee worksheets shall be returned to the committee no later than five (5) legislative days after delivery to the author's office (*Committee Rule 1*).

1) Origin of the bill:

a) **Who is the sponsor of this bill?** What is the source of the bill? (What person, organization, or government entity requested introduction? **Please provide a letter from the sponsor, identifying them as such.**)

The author is the sponsor/source of the bill.

b) Has a similar bill been previously introduced (by any author)? If so, please identify the session, bill number and disposition of the bill.

No similar bill that I was able to identify.

AB 1330 (J. Perez) of this session extends the public comment protections contained in Gov. Code 54954.3 to non-English speakers using a translator.

SB 1003 (Yee), Chapter, 732, Statutes of 2012, created a process by which plaintiffs can secure an enforceable commitment or a court declaration regarding past violations of the Brown Act by a local legislative body.

AB 176 (Silva), Chapter 88, Statutes of 2009, was a technical code clean-up bill amending, but not substantively changing, relevant sections of the Government Code to this bill. This was preceded by AB 2299 (Silva) from the 07/08 session that was substantially similar to AB 176, but was vetoed.

Two other relevant bills that were introduced, but never heard in a policy committee, were AB 194 (Dymally) and AB 2428 (Canciamilla) from the 05/06 session.

2) Please provide a statement of the author's purpose for the bill, which may be used in the Committee's analysis, including ***in detail*** the problem or deficiency in the present law that the bill seeks to remedy, and how the bill resolves the problem?

AB 194 is about the people's right to be heard and protecting their right to fully participate in decisions made by local government.

For 60 years, the Brown Act has been a cornerstone of California democracy by ensuring that people can comment on matters affecting their community. However, too often local agencies have inappropriately curtailed this right and silenced individual's voices. Part of the reason for these actions is that the penalties or remedies for violating this critical right are insufficient.

If an individual files a complaint over being shut out, the local agency can simply promise they won't do it again. The problem is that the action of the agency had already been taken, usually several months before. Meanwhile, nothing is done to make sure that the people and their voice were actually heard and considered prior to a decision being made.

AB 194 uses an existing remedy for when the public's right to comment has been violated. First, it gives an agency the chance to cure or correct the violation. This usually consists of having the particular issue brought before the body again with appropriate time for public comment. Failing to cure or correct the violation, an individual would be able to take their complaint to a judge would could potentially void the action taken by the agency. This two-tiered process already exists in the Brown Act for violations such as failure to properly notify the public about meetings and abusing the provisions that allow closed hearings.

3) Please attach copies of any background material, including any interim committee reports, in explanation of the bill; state where such material is available for reference by committee staff.

4) Please attach copies of letters of support or opposition from any group, organization, or governmental agency. (PLEASE SUBMIT ONE ORIGINAL AND ONE COPY OF WORKSHEET WITH ATTACHMENTS.)

Support letters are coming and will be delivered to the committee ASAP.
Opposition letters do not necessarily reflect the Jan. 2014 amended version of the bill. The opponents (most of them) are aware of the submitted amendments.

5) If you plan substantive amendments to this bill prior to hearing, please explain briefly the substance of the amendments to be prepared and bring what is taken to Legislative Counsel immediately to the committee office. **NOTE: ORIGINAL (SIGNED) PLUS 7 COPIES OF LEGISLATIVE COUNSEL AMENDMENTS MUST BE RECEIVED IN COMMITTEE OFFICE BY 5:00 P.M. OF THE MONDAY PRECEDING THE WEEK OF THE HEARING *(Committee Rule 6(b)).***

No amendments, other than those already submitted, planned prior to the hearing at this point.

6) How much time do you think will be necessary to consider this bill in the committee? 20 minutes

RETURN TO: ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
ROOM 157, 1020 N STREET (LOB) (PHONE: 319-3958)
ATTENTION: DIXIE PETTY FAX: 319-3959