

## Trinidad City Clerk

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**From:** Anita <anitavacation@att.net>  
**Sent:** Monday, October 12, 2020 10:06 AM  
**To:** Trinidad City Clerk  
**Cc:** Anita; nwthomp@gmail.com; sladwig@trinidad.ca.gov; Eli Naffah; jwest@trinidad.ca.gov; Richard Clompus; dgrover@trinidad.ca.gov; tdavies@trinidad.ca.gov; Ryan DeSmet; steve.allen@ghd.com  
**Subject:** Important: Submit for Public Comment for Oct. 13, 2020 City Council Meeting  
**Attachments:** Public Comment for Oct. 13, 2020 City Council Meeting.pdf

TO: City Council

FR: Anita and Norman Thompson

Date: October 12, 2020

Please submit the following letter/email for public comment at the Trinidad City Council Tuesday, October 13, 2020 meeting for: Item "2. Discussion/Decision regarding Water Main Replacement for Van Wycke." (Attachment is in .pdf)

See below the September 12, 2020 email, I sent to City Council, the Major, the City Clerk, City Manager, Public Works and the City Engineer.

The response my husband and I received for the September 12, 2020 email, later the same morning, was: **"We are working on the design and are still working out some details with Ryan. We will have this ready to put out to the three contractors this month, hopefully for construction later this month or October."**

My husband and I are deeply concerned and frustrated that this urgent fire safety project is taking far too long. "At the regular meeting on July 14, 2020, the City Council discussed and voted unanimously to approve the construction of a temporary water main connection to replace the 6" water main taken out of service due to the failing bluff along the Van Wycke Trail."

At the August and September City Council meetings, when I inquired about the status of this emergency Van Wycke water main bypass, everyone agreed it was an urgent matter and an emergency. It was my understanding, as stated in the email response from the City of Trinidad, **"hopefully for construction later this month or October."**, that by now the work for this emergency bypass would have been started and/or near completion. Therefore my husband and I are shocked that construction has not even been started and instead it is an agenda item for "Discussion / Decision" for the October 13, 2020 City Council meeting. More valuable time is wasted, as we are surrounded by the largest fires in California's history.

My husband and I are also concerned with the city's choice of qualified contactors and follow up clean up. The fire hydrant replacement on Van Wycke, not only took almost three months to replace (after this project was approved by the City Council) but when I inquired at two different City Council meetings the status and timeline for the fire hydrant replacement, the last response was that the City was waiting for one of the contractor's best workers to replace the fire hydrant and this person could not complete this project until after Labor Day. Unfortunately the contractor who replaced the Van Wycke fire hydrant, right in front of our house, ruined our landscaping with permanent paint, left the utility markers in the landscaping, painted permanent paint with

a large arrow on our driveway and dumped and left a concrete mess on the red curb and newly paved street. There is also permanent paint on the road. The city repainted the red curb, however it took hours for my husband and me to cut the permanent white and red paint from our landscaping, a lot of our plants were thrown away because the white and red paint would not wash off. Our beautiful landscaping now looks horrible and the permanent white paint with a large arrow on our driveway is ugly. We now have to repaint our driveway. The end result of the fire hydrant replacement, on Van Wycke, is our property and the newly paved road in front of our house still looks like an ongoing construction site. This is unacceptable, however there is nothing that we can do about it. We request that the City of Trinidad, whenever bids are presented, that clean up and care of residents' properties are part of the negotiating contract. Note: This replacement fire hydrant is currently inadequate while we continue to wait for the emergency Van Wycke water main bypass to be completed.

Once again, we ask the City of Trinidad to understand the urgency of this project and complete the temporary water main replacement for Van Wycke Street right away.

Anita and Norman Thompson

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September 12, 2020 email, sent to City Council, the Major, the City Clerk, City Manager, Public Works and the City Engineer at 8:36 a.m.:

Good Morning,

The purpose of this email is to make an urgent plea to start work immediately on the Van Wycke emergency water main/line bypass that was unanimously approved by the City Council during the July meeting, and at this same council meeting, funds were allocated for this emergency bypass project. Since the spring, at every City Council meeting my husband and I have expressed our concerns about fire safety as well as numerous inquiries about the faulty water main on Van Wycke, the replacement fire hydrant and the emergency water main bypass. As you are aware, we lost our community in the Camp Fire; we lived through the impact and reality of fire devastation. All parties involved have acknowledge that this water main bypass is needed and is an emergency, however it is upsetting and worrisome that, like the fire hydrant replacement, it seems to be taking too long to complete. Or in this case, even start. At the last two meetings, I inquired about the status of this emergency bypass project, the responses were vague and it was obvious that this emergency project was not a priority. Are we waiting for the rainy season? Now that we are surrounded by fires, it is my hope you realize how urgent it is to complete this emergency bypass project. As mentioned above, the emergency Van Wycke water main replacement was approved by the council in July and funds were allocated for this emergency project. Why is this project not a priority? What is taking so long? Today is September 12th, when are we going to break ground on this project?

It was ironic on Wednesday, September 9<sup>th</sup> when the work was finally started on the Van Wycke fire hydrant replacement (which is located in our front yard and still isn't complete as the contractor needs to return in order to clean up and take the boards out of the concrete pad) there was a fire in Manila and we were surrounded by fires. I'm sure you are aware, in August and September, there were numerous fires in both Arcata and Eureka. My real concern now is the Red Salmon Complex which grew by approximately 10,000 acres overnight and our containment was reduced from 19% to 18%. From all the reports I've read, the latest report is that the Red Salmon Complex is out of control, resources are stretched thin and the firefighters are waiting for rain in order to contain it. From 'Redwood News', September 9: "The fire acreage has more than doubled

over the past five days and is headed toward the Hoopa Valley Indian Reservation." Trinidad is not that far from this fire.

Thank you in advance for taking care of this urgent matter,

Anita Thompson

## Trinidad City Clerk

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**From:** Dorothy Cox <crabby2@suddenlink.net>  
**Sent:** Monday, October 12, 2020 1:49 PM  
**To:** City of Trinidad  
**Subject:** Please include my comments as public record and include in the packet for the council members for the 10/13/20 CC MEETING  
**Attachments:** IMG\_2666.jpg; Untitled attachment 00031.txt

Please consider option #2 in your discussion tonight on the topic of restricting or perhaps prohibiting overnight parking on Edwards St. My vote would be prohibiting any RV overnight camping / parking anywhere in town.

As a resident who walks daily ALL OF the streets of Trinidad, it has been obvious that every street is subject to overnight parking and camping. Edwards Street had its share of problems this summer, especially Labor Day weekend, but the RVs can be found on any of our streets. If you target Edwards St. solely, those tourists who are inclined to park their RV's on a public street will just back up to Underwood, Ocean, Main, the beach parking lot, the marine lab parking lot and any other side street. There are RV's parked regularly on Main Street in front of the horse field almost year round.

Mary Kline and I pick up trash ( and other things!) everyday and we are amazed at the amount of garbage that is just right here in town..in the gutters and littering the sidewalks.

Our area has many many RV parks and other areas that accommodate camping and RVs. Public streets in town should not be used.

The large RVs that come into town have a difficult time managing to drive on our narrow streets....we have a designated commercial route but many time a huge RV pulling a full size truck or car will come down Ocean Ave. and the problem then becomes how to get out on to Main Street at the north end of Ocean. Maybe signage to address this problem can also be included in your discussion.

Dorothy Cox

## Trinidad City Clerk

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**From:** Richard Harris Jr. <rharrisjr1@gmail.com>  
**Sent:** Monday, October 12, 2020 4:38 PM  
**To:** 'Trinidad City Clerk'  
**Cc:** citymanager@trinidad.ca.gov; 'Bryce Kenny'; 'Jennifer Kalt'  
**Subject:** Letter, RHarris to City Council. Council Mtg, Oct.13, 2020, Discussion/Action Agenda Item 4 / Draft Gov-2-Gov Policy  
**Attachments:** Ltr.RHH.TCC.re.G2G.draft.Policy.10.11.20 (00004105x9CE40).docx; EX 1  
Ltr.TCC.Kenny.Brown.Act.8.11.20.pdf; Ex. 2 TCC.Brown Act Legal Opin. 08-11-2020\_0.pdf

Gabriel –

Please circulate this to the Mayor and Councilpersons individually, and include it in the Public Correspondence File for the Oct. 13 meeting.

And please acknowledge receipt.

Best Regards

Richard Harris

415-290-5718

Richard Harris, Esq.  
1370 Masonic Ave.  
San Francisco, CA. 94117  
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rharrisjr1@gmail.com  
License No. 76704

October 11, 2020  
By e-mail

Mayor Steve Ladwig  
Trinidad City Council  
City Hall  
409 Trinity St.  
P.O. Box 409  
Trinidad, CA. 95570

Re: City Council Meeting, Tuesday, October 13, 2020  
Discussion/Action Agenda, Item No. 4  
Comment on Draft Government-to-Government Meeting Policy

Dear Mayor Ladwig and Members of the City Council,

- 1. Transparent government and open public legislative meetings are core values of California society and government, as articulated in the State Constitution and the Brown Act. This should be specifically acknowledged in The Policies.**

Mutual respect for the cultural values and the respective sovereignty of tribes and the State, including the City of Trinidad, should include respect for the State of California's open government/open public meetings tradition and mandates found in California Constitution, Article I Section 3(b)(1) and (2)<sup>1</sup> and the open public legislative meetings requirements of the Brown Act.<sup>2</sup>

These open public meetings laws, which apply to local legislative bodies such as the Trinidad City Council, including its standing committees, are the subject of detailed letters to the City Council from attorney J. Bryce Kenny, dated

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<sup>1</sup> California Constitution, Art. I Declaration of Rights, SEC. 3(b)(1) and (2)  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%203.&article=I](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%203.&article=I)

<sup>2</sup> California Government Code Sections 54950-54963  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=2.&title=5.&part=1.&chapter=9)

July 14, 2020<sup>3</sup> and August 11, 2020.<sup>4</sup> (Copy attached as **Exhibit 1.**) These letters are incorporated herein by this reference.

The State Constitution and Brown Act should be specifically acknowledged in the Policies, by adding the following language to the end of the second sentence of Section IV, “Disclaimers”: “. . . including but not limited to California Constitution Article 1, Section 3(b)(1) and (2) and the Brown Act, Government Code Section 54950, ff.”

- 2. The “Ad Hoc Committee as Tribal Liaison”. Whatever it may be called – whether “ad hoc committee” or “garden club,” if it fits the Brown Act’s definition of a “standing committee,” then the committee’s meetings, including meetings with Indian tribes, must be publicly noticed, open to the public, and subject to the other requirements of the Brown Act. In this case, the committee contemplated by the Draft Government to Government Meeting Policy – with continuing subject matter jurisdiction of Tribal Relations Liaison – fits the Brown Act’s definition of a “standing committee,” under Government Code Section 54952(b).**

As discussed in detail in Attorney Kenny’s August 11, 2020 letter to City Council, the Brown Act requires, with limited exceptions, that all meetings of California “legislative bodies” (including city councils) must be open to the public, noticed, and subject to other detailed transparency requirements.<sup>5</sup> “Standing committees” of legislative bodies are themselves treated as “legislative bodies,” subject to the open meetings requirements.

**“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. . .” (Gov.C. 54953(a))<sup>6</sup>**

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<sup>3</sup> Letter, J. Bryce Kenny to Trinidad Mayor Steve Ladwig and City Council, July 14, 2020: <https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Public%20Comments%2007-14-2020%20cc.pdf>

<sup>4</sup> Letter, J. Bryce Kenny to Trinidad Mayor Steve Ladwig and City Council, Aug. 11, 2020 (Copy attached as **Ex. 1.**) [https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE\\_Yt1IRiWkB5-ZV/view?usp=sharing](https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE_Yt1IRiWkB5-ZV/view?usp=sharing)

<sup>5</sup> Letter, J Bryce Kenny, etc., Aug. 11, 2020, *Id.* at pages 2-3.

<sup>6</sup> California Government Code 54953(a): [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=54953](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=54953).

... **standing committees of a legislative body**, irrespective of their composition, **which have a continuing subject matter jurisdiction, . . . are legislative bodies for purposes of this chapter**” (Gov.C. 54952(b))<sup>7</sup>

**Except as expressly authorized by this chapter**, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, **no closed session may be held by any legislative body of any local agency.** (Gov.C. 54962)<sup>8</sup>

Moreover, the Brown Act is preemptive – it applies “notwithstanding the conflicting provisions of any other state law.”

**The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.”** (Gov.C. 54958)<sup>9</sup>

Attorney Kenny’s August 11 letter (**Ex. 1**, at pages 2-4) documents a years-long history of behind-closed-doors meetings between the Trinidad City Council’s Tribal Liaison Committee and the Trinidad Rancheria and other local tribes. At a key February 13, 2018 Special Meeting of the Trinidad City Council that focused on meetings between the Tribal Liaison Committee and the stakeholder groups – Yurok Tribe, Trinidad Rancheria, and Tsurai Ancestral Society – in the Tsurai Management Team, the City Council voted, on the recommendation of then-City Manager Dan Berman and the advice of City Attorney Andy Stunich, to adopt a transparency policy for the City’s participation in the meetings:

“(1) **TMT meetings should be open to the public.** Where discussions of confidential information regarding cultural resources is needed, the TMT can hold closed sessions, or the key parties can meet outside of the TMT

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<sup>7</sup> California Government Code 54952(b):  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=54952.&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54952.&lawCode=GOV)

<sup>8</sup> California Government Code 54962:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=54962](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=54962)

<sup>9</sup> California Government Code 54958:  
[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=54958.&lawCode=GOV](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=54958.&lawCode=GOV)

format. [and] 4. **City participation in the TMT needs to be subject to applicable Brown Act requirements.**"<sup>10, 11</sup>

When the issue of Government-to-Government meeting policy was last before the City Council at its August 11, 2020 meeting, then-City Attorney Andrew Stunich concluded his advice letter to the Council with the following Opinion:

"Certainly meetings with staff should be able to be kept outside of the Brown Act if the guidelines set forth above are followed. **I think that repeated or regularly scheduled meetings with council members are going to run into problems.** Much will depend on what happens the meetings and how the information shared is passed along or utilized."<sup>12</sup>

**3. Government Code Section 65352.4 applies only to general planning and open space planning. It does not throw a general-purpose confidentiality blanket over anything that might be discussed between a legislative body and an Indian tribe.**

Government Code Section 65352.4<sup>13</sup>, cited in Section II of the Draft Policies, is not a statute of general application. Rather it defines consultation only for " purposes of [Government Code] Section 65351, 65352.3, and 65562.5." That is, for the preparation, amendment, and adoption of city and county general plans<sup>14, 15</sup> and planning for open space.<sup>16</sup>

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<sup>10</sup> Minutes, Trinidad City Council Special Meeting, Feb. 13, 2018, at p. 4, found at Agenda Packet of City Council Mar. 14, 2018 Meeting at pg. 6/59: [https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/03-14-18%20cc%20packet\\_1.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/03-14-18%20cc%20packet_1.pdf)

<sup>11</sup> Letter, J. Bryce Kenny to Trinidad Mayor Steve Ladwig and City Council, Aug. 11, 2020 (Copy attached as **Ex. 1.**)  
[https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE\\_Yt1IRiWkB5-ZV/view?usp=sharing](https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE_Yt1IRiWkB5-ZV/view?usp=sharing)

<sup>12</sup> Brown Act Legal Opinion to Trinidad City Council, Aug. 11, 2020 (Copy attached, **Ex. 2**)  
[https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%208-11-2020\\_0.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%208-11-2020_0.pdf)

<sup>13</sup> California Government Code Section 65352.4  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=GOV&sectionNum=65352.4](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=65352.4)

<sup>14</sup> California Government Code Section 65351  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65351.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65351.&lawCode=GOV)

<sup>15</sup> California Government Code Section 65352.3  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65352.3.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65352.3.&lawCode=GOV)

<sup>16</sup> California Government Code Section 65562.5  
[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=65562.5.&lawCode=GOV](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65562.5.&lawCode=GOV)

**4. Confusion of terminology: “tribes,” “California Indian Tribes,” “federally recognized tribes,” “Native American Tribes,” and “tribal communities”.**

In Section I, the Draft Policy uses the words “tribes” and “tribal communities.” In Sections II and IV, the Draft Policy refers to “California Indian tribes,” “federally recognized tribes,” “known non-federally recognized tribes,” “Native American Tribes,” and “tribes”. There are statutes and bodies of Federal and California law which may recognize sovereignty and/or other status as to some but not all of these groups. The Draft Policy does not make clear whether all of its proposed policies apply to all of these groups or only to some. This should be clarified (i) by use of a single term to refer to all of these groups; or, if that is not the Policies’ intent (ii) by specifying which policies apply to which of these different classifications. If not made clear now, when the attention of Council and staff are focused on the issue, then at some later time when some or all of the current Councilpersons and staff have left the scene, the Draft Policies’ imprecise terminology is likely to become a source of confusion and dispute.

Finally, at Council’s August 11, 2020 meeting, issues of reporting-out, agendizing, and rotating councilmembers on the Tribal Liaison Committee were discussed. (August 11, 2020 Meeting’s Draft Minutes, page 7, in Council’s Meeting Packet for the October 13, 2020 Council meeting.<sup>17</sup> of the Council’s August 11, 2020 meeting, in the Council’s Meeting Packet. These points should be covered in a final Policy document, and should favor transparency – as required by the Brown Act and the California Constitution.

Respectfully submitted,

*Richard Harris*

Richard Harris

List of Exhibits – Next Page

cc: Eli Naffah, Trinidad city Manager  
Supervisor Steve Madrone, Humboldt County Board of Supervisors  
Supervisor Mike Wilson, Humboldt County Board of Supervisors  
Sarah Lindgren-Akana, Tsurai Ancestral Society  
Jennifer Kalt, Humboldt Baykeeper  
Kelly Lindgren  
J. Bryce Kenny, Esq.  
Humboldt Alliance for Responsible Planning Executive Committee

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<sup>17</sup> Trinidad City Council Meeting Packet for Oct. 13, 2020 meeting, at page 7:  
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/10-13-2020%20cc%20packet1.pdf>

## LIST OF EXHIBITS

**1** Letter, J. Bryce Kenny to Trinidad Mayor Ladwig and City Council, Aug. 11, 2020  
[https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE\\_Yt1IRiWkB5-ZV/view?usp=sharing](https://drive.google.com/file/d/1LqJTp3LErrcNI-OPjE_Yt1IRiWkB5-ZV/view?usp=sharing)

**2** Brown Act Legal Opinion to Trinidad City Council, Aug. 11, 2020  
[https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%2008-11-2020\\_0.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%2008-11-2020_0.pdf)

**J. Bryce Kenny**  
**Attorney at Law**  
**P.O. Box 361**  
**Trinidad, California 95570**  
**Telephone: (707) 442-4431**  
**Email: jbrycekenny@gmail.com**

August 11, 2020  
By e-mail

Mayor Steve Ladwig  
Trinidad City Council  
City Hall; 409 Trinity St.  
P.O. Box 409  
Trinidad, CA. 95570

**Re: City Council Meeting, Tuesday, August 11, 2020, 6 p.m.**  
**Discussion Agenda Item 4**

**Humboldt Alliance for Responsible Planning objects to the Draft “Government to Government Meeting Policy” because it would continue an illegal City Council practice of closed meetings with the Rancheria that violates the open public meeting laws of the Brown Act and the State Constitution, Article 1, Section 3.**

**The City Council committee that has for years been meeting in secret with the Rancheria is a “standing committee” appointed by the Council to deal with longstanding and ongoing issues of Tribal relations. This can hardly be called “ad-hoc” or temporary.**

**The City Council has been publicly advised by the City Attorney in February 2018, and again in August 2020, that behind-closed-doors meetings between a City Council committee and the Rancheria are problematic.**

Dear Mayor Ladwig and Members of the Trinidad City Council,

This letter supplements my letters to you dated July 14, 2020<sup>1</sup> and June 19, 2020<sup>2</sup>, which provide legal analysis and extensive citation to the controlling law. Because my prior letters have been, oddly, omitted from the August 11 Agenda Packet, I have attached copies of them hereto as Exhibits A and B respectively, with a request that Council Members read them.

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<sup>1</sup> Letter, J. Bryce Kenny, Esq. to Trinidad Mayor Steve Ladwig and City Council, July 14, 2020:  
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Public%20Comments%2007-14-2020%20cc.pdf>

<sup>2</sup> Letter, J. Bryce Kenny, Esq. to Trinidad Mayor Steve Ladwig and City Council, June 19, 2020:  
<https://drive.google.com/file/d/1gBwXukzzzx8cE5f3BDguTHkzZUOFq2ri/view?usp=sharing>

1. **The City Council must comply with California’s Open Meetings Laws, the Brown Act and California Constitution Article 1 Section 3. The Brown Act makes no provision for closed meetings of California legislative bodies – whether they are called “Government to Government” or anything else. Rather, the Brown Act and State Constitution require all legislative bodies – including city councils and their standing committees – to meet in open, public meetings.**

This issue is discussed in detail, with extensive legal citation, at pages 2-3 of my July 14, 2020 letter (Exhibit A and footnote 1, below). Very briefly summarized: (1) the State Constitution, at Article 1 Section 3, requires that “the meetings of public bodies . . . shall be open to public scrutiny”; (2) **any statute, law, or other rule furthering the right of public access shall be broadly construed, while any such statute, law, etc. limiting the right of public access shall be narrowly construed**; (3) the Ralph M. Brown Act (“Brown Act”) provides that (i) all meetings of legislative bodies (including city councils) shall be open and public (Government Code Section 54953(a), and (b) that standing committees are legislative bodies for purposes of the open meetings requirement (Government Code Section 54952(b). The Brown Act’s open meeting requirement is preemptive – “notwithstanding the provisions of any other state law.” (Government Code Section 54958).

2. **Trinidad City Council has had for many years a committee whose continuing subject matter jurisdiction is to deal with the Tribes. Because it is a committee of long duration, with continuing subject matter jurisdiction, this committee meets the definition of a “standing committee” under the Brown Act. The councilmen on this standing committee have at least since 2018 been meeting with the Rancheria in “government-to-government” meetings in violation of the open public meetings mandates of the Constitution and the Brown Act.**

The Brown Act provides that “... standing committees of a legislative body, irrespective of their composition, which have a **continuing subject matter jurisdiction**, . . . are legislative bodies for purposes of this chapter.” (Government Code Section 54952(b).

It is quite clear in the case of the Trinidad City Council’s committee that has been meeting with the Rancheria, that the committee’s subject matter jurisdiction is Tribal relations, and that it is a committee of long duration, not limited to a specific task or a short time period. The Rancheria is a fact-of-life on the Trinidad outskirts, the owner of significant local properties, and the area’s biggest business and employer. So Tribal liaison is an ongoing, long-term calling – not a short-term, one-task-at-a-time proposition.

To illustrate the difference between a “standing committee” and an ad-hoc advisory committee, the California Attorney General gives the following examples:

- “Advisory committee comprised of two councilmembers for the purpose of reviewing all issues related to parks and recreation in the city on an ongoing basis: This committee is a standing committee which is subject to the Act’s requirements because it has continuing jurisdiction over issues related to parks and recreation in the city.
- Advisory committee comprised of two city councilmembers for the purpose of producing a report in six months on downtown traffic congestion: This committee is exempt advisory committee because it is comprised solely of less than a quorum of the an members of the city council. It is not a standing committee because it is charged

with accomplishing a specific task in a short period of time, i.e., it is a limited term ad hoc committee.”<sup>3</sup>

In the instant case, the task of relations with the local Tribes more resembles the Attorney General’s parks commission example than it does producing a six-month traffic report.

Testimony at several Council meetings has established that the committee that has been meeting with the Rancheria in what have been characterized as “Government to Government meetings” has been comprised of Mayor Ladwig and Vice-Mayor West, together with the City Manager. Councilmembers Ladwig and West have been members of the City Council’s standing “Tribal Government Liaison – (Trinidad Rancheria/Yurok Tribe)” Committee since at least January 2019, as shown on the table captioned “Committee Assignments: As of January 09, 2019”.<sup>4</sup> (Copy attached as Exhibit C hereto.) At its July 10, 2019 meeting, Council made a handful of committee member replacements, none of which affected the Tribal Government Liaison Committee at that time.<sup>5</sup> Councilman West, who in January 2019 was listed in as the Alternate, apparently stepped-in as a regular Member of the Tribal Government Liaison Committee following the retirement of Councilman Baker. **It is quite apparent that what they have recently been calling the “Executive Committee” or the “Government-to-Government Committee” has been a function of their assignments as the Council’s designated committeemen on the Tribal Government Liaison (Trinidad Rancheria/Yurok Tribe) Committee.**

- 3. At a February 13, 2018 Special Meeting, and upon the on-the-record advice of City Attorney Andy Stunich, the City Council adopted a policy of open public meetings for a City/Tribal relations matter involving the Tsurai Management Team. That policy has never been revoked by the City Council. And the rationale of that policy applies to the City Council’s dealings with the Rancheria.**

The Brown Act and its application to the Trinidad City Council’s meetings with the Tribes is an issue well-known to the Council. The Council convened a February 13, 2018 Special Meeting to formulate City policies for participation in the Tsurai Management Team, focusing on management of the Tsurai Study Area, a 12.5-acre parcel of City-owned land that includes the historic location of the Yurok village of Tsurai. The Yurok Tribe, Tsurai Ancestral Society, and Trinidad Rancheria are all identified as “stakeholder groups.” The City Council committee representatives were Councilmen West and former Councilman Baker.<sup>6</sup> Two issues

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<sup>3</sup> Office of the California Attorney General (2003),  
The Brown Act: Open Meetings for Local Legislative Bodies, at p. 6 (20/114)  
<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/brownAct2003.pdf>

<sup>4</sup> Trinidad City Council, Committee Assignments as of January 09, 2019:  
[https://drive.google.com/file/d/10rzRGvRKdliLDozA7\\_T\\_xlVqKX24klSN/view?usp=sharing](https://drive.google.com/file/d/10rzRGvRKdliLDozA7_T_xlVqKX24klSN/view?usp=sharing)

<sup>5</sup> City Council Meeting Agenda Packet, July 10, 2019, at pp. 50-52  
Discussion Item 1, “Discussion/Decision regarding Council Committee and Commissionership assignments,  
<https://drive.google.com/file/d/1Pq0XUUCsmVbUvYza9ESZcmjvK7YY2r4d/view?usp=sharing>

<sup>6</sup> See Trinidad City Council, Committee Assignments as of January 09, 2019:  
[https://drive.google.com/file/d/10rzRGvRKdliLDozA7\\_T\\_xlVqKX24klSN/view?usp=sharing](https://drive.google.com/file/d/10rzRGvRKdliLDozA7_T_xlVqKX24klSN/view?usp=sharing)  
(Copy attached as Exhibit C)

addressed in then-City Manager Dan Berman's Report (copy attached as Exhibit D) were Closed Meetings and the Brown Act, as follows (quoting from the Report):

"Open vs. Closed meetings: The TMT has normally held closed meetings, with guests outside of the TMT members invited only by unanimous consent of the TMT.

"TMT and the Brown Act **The Brown Act requires that "standing committees" of the City hold their meetings in accordance with the Brown Act.** This means the meetings are open to the public, and agendas are posted in advance. **The definition of "standing committee" is broadly interpreted as a committee involving appointed Council members, meeting on an ongoing basis, to address a specific issue or set of issues. Staff believes a cautious interpretation could make the TMT subject to the Brown Act if Council members are central City representatives to the group.**"<sup>7</sup> (A copy of the City Manager's Report is attached hereto as Exhibit D.)

Minutes of that February 13, 2018 Special Meeting reflect that City Attorney Andy Stunich attended, and in response to Councilman West, advised the Council as follows:

**West:** Asked City Attorney Stunich about the status of TMT meetings regarding the Brown Act. **Stunich** stated he had **concerns about the meetings, especially if Councilmembers are attending. He explained that sending Staff to a meeting or sending a Councilmember to gather information does not present any Brown Act issues. However, if a Councilmember is attending and participating, it's best to be cautious and abide by the Brown Act.** Stunich also stated that it was "odd" that the TMT meetings are intended to manage public property.<sup>8</sup> (A copy of the Feb. 13, 2018 Special Meeting Minutes is attached hereto as Exhibit E.)

Staff recommended that the Council adopt five policies for the TMT meetings, including (1) that meetings should be open to the public, and (4) that the City's participation in the TMT "needs to be subject to applicable Brown Act requirements." The meeting minutes reflect that Councilmembers Miller and Ladwig supported the open meetings, as did then-Mayor Susan Rotwein, who said, **"The public has been left out of these meetings for too long. Transparency is important."** On Councilman Miller's motion, he and Council Members Ladwig and Rotwein voted in favor of adopting staff's recommended policies, including:

**"(1) TMT meetings should be open to the public.** Where discussions of confidential information regarding cultural resources is needed, the TMT can hold closed sessions, or the key parties can meet outside of the TMT format. [and] **4. City participation in the TMT needs to be subject to applicable Brown Act requirements.**"<sup>9</sup>

So Council adopted the open public meeting policy. Councilmen West and Baker voted NO.<sup>10</sup>

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<sup>7</sup> Trinidad City Council, Special Meeting, Feb. 13, 2018, Report, p.3 (5/6) (emphasis added)

[https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/02-13-18%20scc%20packet\\_0.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/02-13-18%20scc%20packet_0.pdf) (Copy attached, Ex. D)

<sup>8</sup> Minutes, Trinidad City Council Special Meeting, Feb. 13, 2018, at p. 2,

[https://drive.google.com/file/d/1jZVAzf\\_m7qxIZW5U5047mwjaajnobxLW/view?usp=sharing](https://drive.google.com/file/d/1jZVAzf_m7qxIZW5U5047mwjaajnobxLW/view?usp=sharing)

Note: the Feb. 13, 2018 Special Meeting Minutes were approved by Council at its May 9, 2018 meeting

Agenda Packet, May 9, 2018, at 3/52: <https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/05-09-18%20cc%20packet.pdf>

<sup>9</sup> Minutes, Trinidad City Council Special Meeting, Feb. 13, 2018, at p. 4, found at Agenda Packet of City Council Mar. 14, 2018 Meeting at pg. 6/59: [https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/03-14-18%20cc%20packet\\_1.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/03-14-18%20cc%20packet_1.pdf)

<sup>10</sup> Minutes, Trinidad City Council Special Meeting, Feb. 13, 2018 at p. 4 (6/59), Id.

#### 4. CONCLUSION: THE STATE CONSTITUTION AND THE BROWN ACT REQUIRE OPEN PUBLIC MEETINGS IN TRINIDAD

Under California law, the people – in this case, City of Trinidad residents and voters – have a right that the people’s business be conducted in public. Not behind closed doors. This applies to all “legislative bodies” and their “standing committees,” including the Trinidad City Council’s committee that has been meeting behind closed doors with the Rancheria. This is the gist of City Attorney Stunich’s on-the-record advice to the City Council at the February 13, 2018 Special Meeting.

And it is the gist of the “Brown Act Legal Opinion To: Cuty of Trinidad From City Attorney” that first appeared the city’s website on the evening of August 10, with the caption “08-11-2020 CC Packet add-on”. (<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%2008-11-2020.pdf>). That Legal Opinion (curiously, undated and unsigned) states, in pertinent part:

“Question raised: can the City have government to government meetings with other legal entities such as the Rancheria . . .

The Ralph M. Brown Act is California’s “sunshine” law for local government. . . . In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.”<sup>11</sup>

The Legal Opinion concludes:

“Certainly meetings with staff should be able to be kept outside of the Brown Act if the guidelines set forth above are followed. I think that repeated or regularly scheduled meetings with council members are going to run into problems.”<sup>12</sup>

HARP opposes the Draft “Government to Government Meeting Policy” because it would perpetuate a clearly illegal practice of closed legislative body meetings. And we urge the Council and each of its members individually to stop this practice now.

Respectfully submitted,

s/

J. Bryce Kenny

Copies and Exhibits: see next page

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<sup>11</sup> Brown Act Legal Opinion to Cuty of Trinidad from City Attorney, 8.11.20, at p. 1  
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%2008-11-2020.pdf>

<sup>12</sup> Brown Act Legal Opinion to Cuty of Trinidad from City Attorney, 8.11.20, at p. 7  
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Brown%20Act%20Legal%20Opinion%2008-11-2020.pdf>

cc: Eli Naffah, Trinidad city Manager  
Supervisor Steve Madrone, Humboldt County Board of Supervisors  
Supervisor Mike Wilson, Humboldt County Board of Supervisors  
Sarah Lindgren-Akana, Tsurai Ancestral Society  
Jennifer Kalt, Humboldt Baykeeper  
Kelly Lindgren  
Humboldt Alliance for Responsible Planning Executive Committee

## LIST OF EXHIBITS

**A** Letter, J. Bryce Kenny, Esq. to Trinidad Mayor Steve Ladwig and City Council, July 14, 2020:  
<https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/Public%20Comments%2007-14-2020%20cc.pdf>

**B** Letter, J. Bryce Kenny, Esq. to Trinidad Mayor Steve Ladwig and City Council, June 19, 2020:  
<https://drive.google.com/file/d/1gBwXukzzzx8cE5f3BDguTHkzZUOFq2ri/view?usp=sharing>

**C** Trinidad City Council, Committee Assignments as of January 09, 2019:  
[https://drive.google.com/file/d/10rzRGvRKdliLDozA7\\_T\\_xIVqKX24kISN/view?usp=sharing](https://drive.google.com/file/d/10rzRGvRKdliLDozA7_T_xIVqKX24kISN/view?usp=sharing)

**D** Trinidad City Council, Special Meeting, Feb. 13, 2018, Report, p.3 (5/6)  
[https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/02-13-18%20scc%20packet\\_0.pdf](https://trinidad.ca.gov/sites/trinidad.ca.gov/files/library/02-13-18%20scc%20packet_0.pdf)

**E** Minutes, Trinidad City Council Special Meeting, Feb. 13, 2018, at p. 2,  
[https://drive.google.com/file/d/1jZVAzf\\_m7qxLZW5U5047mwjaajnobxLW/view?usp=sharing](https://drive.google.com/file/d/1jZVAzf_m7qxLZW5U5047mwjaajnobxLW/view?usp=sharing)

## Brown Act Legal Opinion

TO: City of Trinidad

From: City Attorney

Question raised: can the City have government to government meetings with other legal entities such as the Rancheria The short answer is that there is no short answer as it depends on the frequency and nature of the meeting.

First let me summarize the Legislative purpose of the Brown Act and its application to serial meetings.

The Ralph M. Brown Act is California's "sunshine" law for local government. It is found in the California Government Code beginning at Section 54950. In a nutshell, it requires local government business to be conducted at open and public meetings, except in certain limited situations. The Brown Act is based upon state policy that the people must be informed so they can keep control over their government.

### A. Application of the Brown Act to "Legislative Bodies"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council) and any commission, committee, board or other body of the local agency, whether permanent or temporary, decision-making or advisory, that is created by formal action of a legislative body (Section 54952). Standing committees of a legislative body, which consist solely of less than a quorum of the body, are subject to the requirements of the Act. Some common examples include the finance, personnel, or similar policy subcommittees of the city council or other city legislative body that have either some "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. **Standing committees exist to make routine and regular recommendations on a specific subject matter, they survive resolution of any one issue or matter, and are a regular part of the governmental structure.** The Brown Act does not apply to ad hoc committees consisting solely of less than a quorum of the legislative body, provided they are composed solely of members of the legislative body and provided that these ad hoc committees do not have some "continuing subject matter jurisdiction," and do not have a meeting schedule fixed by formal action of a legislative body. Thus, ad hoc committees would generally serve only a limited or single purpose, they are not perpetual and they are dissolved when their specific task is completed. Standing committees may, but are not required to, have regular meeting schedules. Even if such a committee does not have a regular meeting schedule, its agendas should be posted at least 72 hours in advance of the meeting (Section 54954.2). If this is done, the meeting is considered to be a regular meeting for all purposes. If not, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply. The governing boards of private entities are subject

to the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the public agency, or (ii) the private entity receives funds from the local agency and the private entity's governing body includes a member of the legislative body who was appointed by the legislative body (Section 54952). The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency who have not yet assumed the duties of office (Section 54952.1). Under this provision, the Brown Act is applicable to newly elected, but not-yet-sworn-in council members.

**B. Meetings** The central provision of the Brown Act requires that all “meetings” of a legislative body be open and public. The Brown Act definition of the term “meeting” (Section 54952.2) is a very broad definition that encompasses almost every gathering of a majority of Council members and includes: “Any congregation of a majority of members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” In plain English, this means that a meeting is any gathering of a majority of members to hear or discuss any item of city business or potential city business.

**There are six specific types of gatherings that are not subject to the Brown Act. We refer to the exceptions as: (1) the individual contact exception; (2) the seminar and conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception.** Unless a gathering of a majority of members falls within one of the exceptions discussed below, if a majority of members are in the same room and merely listen to a discussion of city business, then they will be participating in a Brown Act meeting that requires notice, an agenda, and a period for public comment.

### **1. The individual contact exception**

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting (Section 54952.2(c)(1)). However, such contacts may constitute a “serial meeting” in violation of the Brown Act if the individual also makes a series of individual contacts with other members of the legislative body serving as an intermediary among them. An explanation of what constitutes a “serial meeting” follows below.

**2. The seminar and conference exception** The attendance by a majority of members at a seminar or conference or similar educational gathering is also generally exempt from Brown Act requirements (Section 54952.2 (c)(2)). This exception, for example, would apply to attendance at a California League of Cities seminar. However, in order to qualify under this exception, the seminar or conference must be open to the public and be limited to issues of general interest to the public or to cities. Finally, this exception will not apply to a conference or seminar if a majority of members discuss among themselves items of specific business relating to their own city, except as part of the program.

### **3.. The community meeting exception**

The community meeting exception allows members to attend neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings sponsored by an organization other than the city at which issues of local interest are discussed (Section 54952.2(c)(3)). However, members must observe several rules that limit this exception. First, in order to fall within this exception, the community meeting must be “open and publicized.” Therefore, for example, attendance by a majority of a body at a homeowners association meeting that is limited to the residents of a particular development and only publicized among members of that development would not qualify for this exemption. Also, as with the other exceptions, a majority of members cannot discuss among themselves items of city business, except as part of the program.

#### **4. The other legislative body exception**

This exception allows a majority of members of any legislative body to attend meetings of other legislative bodies of the city or of another jurisdiction (such as the county or another city) without treating such attendance as a meeting of the body (Section 54952.2(c)(4)). Of course, as with other meeting exceptions, the members are prohibited from discussing city business among themselves except as part of the scheduled meeting.

#### **5. The social or ceremonial occasion exception**

As has always been the case, Brown Act requirements do not apply to attendance by a majority of members at a purely social or ceremonial occasion provided that a majority of members do not discuss among themselves matters of public business (Section 54942.2(c)(5)).

#### **6. The standing committee exception**

This exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the standing committee without making the gathering a meeting of the full legislative body itself. The exception is only applicable if the attendance of the members of the legislative body who are not standing committee members would create a gathering of a majority of the legislative body; if not, then there is no "meeting." If their attendance does establish a quorum of the parent legislative body, the members of the legislative body who are not members of the standing committee may only attend as “observers” (Section 54952.2(c)(6)). This means that members of the legislative body who are not members of the standing committee should not speak at the meeting, sit in their usual seat on the dais or otherwise participate in the standing committee's meeting.

With a very few exceptions, all meetings of a legislative body must occur within the boundaries of the local governmental agency (Section 54954). Exceptions to this rule which allow the City Council to meet outside the City include meeting outside the jurisdiction to comply with a court order or attend a judicial proceeding, to inspect real or personal property, **to attend a meeting with another legislative body in that other body's jurisdiction**, to meet with a state or federal representative to discuss issues affecting the local agency over which the other officials have jurisdiction, to meet in a facility outside of, but owned by, the local agency, or to visit the office of the local agency's legal counsel for an authorized closed session. These are meetings and in all other respects must comply with agenda and notice requirements. “Teleconferencing” may be used as a method for conducting meetings whereby members of the body may be counted

towards a quorum and participate fully in the meeting from remote locations (Section 54953(b)). The following requirements apply: the remote locations may be connected to the main meeting location by telephone, video or both; the notice and agenda of the meeting must identify the remote locations; the remote locations must be posted and accessible to the public; all votes must be by roll call; and the meeting must in all respects comply with the Act, including participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. No person can compel the legislative body to allow remote participation. The teleconferencing rules only apply to members of the legislative body; they do not apply to staff members, attorneys or consultants who can participate remotely without following the posting and public access requirements. All actions taken by the legislative body in open session and the vote of each member thereon must be disclosed to the public at the time the action is taken. (Section 54953(c)(2)).

### **C.Serial Meetings**

In addition to regulating all gatherings of a majority of members of a legislative body, the Brown Act also addresses some contacts between individual members of legislative bodies. On the one hand, the Brown Act specifically states that nothing in the Act is intended to impose Brown Act requirements on individual contacts or conversations between a member of a legislative body and any other person (Section 54952.2(c)(1)). However, the Brown Act also prohibits a series of such individual contacts if they result in a “serial meeting” (Section 54952.2(b)). Section 54952.2(b)(1) prohibits a majority of members of a legislative body outside of a lawful meeting from directly or indirectly using a series of meetings to discuss, deliberate or take action on any item of business within the subject matter

jurisdiction of the body. Paragraph (b)(2) expressly provides that substantive briefings of members of a legislative body by staff are permissible, as long as staff does not communicate the comments or positions of members to any other members.

A serial meeting is a series of meetings or communications between individuals in which ideas are exchanged among a majority of a legislative body (i.e., three council members) through either one or more persons acting as intermediaries or through use of a technological device (such as a telephone answering machine, or e-mail or voice mail), even though a majority of members never gather in a room at the same time. Serial meetings commonly occur in one of two ways; either

a staff member, a member of the body, or some other person individually contacts a majority of members of a body and shares ideas among the majority (“I’ve talked to Councilmembers A and B and they will vote ‘yes.’ Will you?”) or, without the involvement of a third person, member A calls member B, who then calls member C, and so on, until a majority of the body has reached a collective concurrence on a matter. We recommend the following guidelines be followed to avoid inadvertent violation of the serial meeting rule. These rules of conduct apply only when a majority of a legislative body is involved in a series of contacts or communications. The types of contacts considered include contacts with local agency staff members, constituents, developers, lobbyists and other members of the legislative body.

### 1. Contacts with staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. To avoid an illegal serial meeting through a staff briefing: a. Individual briefings of a majority of members of a legislative body should be “unidirectional,” in that information should flow from staff to the member and the member's participation should be limited to asking questions and acquiring information. Otherwise, multiple members could separately give staff direction thereby causing staff to shape or modify its ultimate recommendations in order to reconcile the views of the various members, resulting in an action outside a meeting. b. Members should not ask staff to describe the views of other members of the body, and staff should not volunteer those views if known. c. Staff may present its viewpoint to the member, but should not ask for the member's views and the member should avoid providing his or her views unless it is absolutely clear that the staff member is not discussing the matter with a quorum of the legislative body.

### 2. Contacts with constituents, developers and lobbyists

As with staff, a constituent or lobbyist can also inadvertently become an intermediary who causes an illegal serial meeting. Constituents' unfamiliarity with the requirements of the Act aggravate this potential problem because they may expect a member of a legislative body to be willing to commit to a position in a private conversation in advance of a meeting. To avoid serial meetings via constituent conversations: a. First, state the ground rules “up front.” Ask if the constituent has or intends to talk with other members of the body about the same subject; if so, make it clear that the constituent should not disclose the views of other members during the conversation.

b. Explain to the constituent that you will not make a final decision on a matter prior to the meeting. For example: “State law prevents me from giving you a commitment outside a meeting. I will listen to what you have to say and give it consideration as I make up my mind.”

c. Do more listening and asking questions than expressing opinions.

d. If you disclose your thoughts about a matter, counsel the constituent not to share them with other members of the legislative body.

### 3. Contacts with fellow members of the same legislative body

Direct contacts concerning local agency business with fellow members of the same legislative body, whether through face-to-face or telephonic conversations, notes or letters, electronic mail or staff members, are the most obvious means

by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of agency business with another member of the body outside of a meeting; as long as the communication does not involve a quorum of the body, no “meeting” has occurred. There is, however, always the risk that one participant in the communication will disclose the views of the other participant to a third or fourth member, creating an illegal serial meeting. Therefore, we recommend you avoid discussing local agency business with a quorum of the body or communicating the views of other members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, please ask for advice.

## Opinion

Certainly meetings with staff should be able to be kept outside of the Brown Act if the guidelines set forth above are followed.

I think that repeated or regularly scheduled meetings with council members are going to run into problems. Much will depend on what happens at the meetings and how the information shared is passed along or utilized.