



Superior Court of California  
County of Kern

Date: 01/08/2020

Time: 8:00 AM - 5:00 PM

BCV-17-102929

FIRST AMENDMENT COALITION ET AL VS CITY OF BAKERSFIELD

Courtroom Staff

Honorable: Stephen D. Schuett

Clerk: Stephanie Paredes

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NATURE OF PROCEEDINGS: RULING ON MOTION FOR WRIT OF MANDATE RELIEF FOR VIOLATIONS OF THE  
RALPH M. BROWN ACT HERETOFORE SUBMITTED ON 12/13/2019

The Court's ruling with regards to the matter submitted on 12/13/2019 is attached and is incorporated hereto and made a part thereof

Copy of ruling mailed to all parties as stated on the attached certificate of mailing.

MINUTES  
Page 1 of 2

FIRST AMENDMENT COALITION ET AL VS CITY OF BAKERSFIELD

BCV-17-102929

MINUTES FINALIZED BY:

Stephanie Paredes

ON: 1/8/2020

SCANNED

**FIRST AMENDMENT COALITION ET AL VS CITY OF BAKERSFIELD**  
**BCV-17-102929**

**CERTIFICATE OF MAILING**

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minutes dated January 08, 2020* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: January 08, 2020

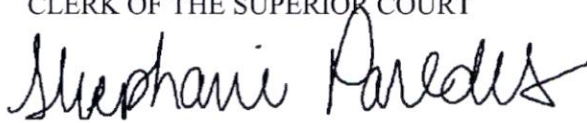
Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

**Tamarah Harber-Pickens**  
CLERK OF THE SUPERIOR COURT

Date: January 08, 2020

By:



Stephanie Paredes, Deputy Clerk

Signed: 1/8/2020 04:11 PM

**MAILING LIST**

KELLY A AVILES  
LAW OFFICES OF KELLY AVILES  
1502 FOOTHILL BLVD #103-140  
LA VERNE CA 91750

JOHN R SZEWCZYK  
CLIFFORD & BROWN  
1430 TRUXTUN AVE #900  
BAKERSFIELD CA 933015230

1 NATURE OF PROCEEDINGS: RULING ON MOTION FOR WRIT OF MANDATE,  
2 INJUNCTIVE AND DECLARATORY RELIEF

3 Petitioners First Amendment Coalition and Californians Aware, The  
4 Center for Public Forum Rights (hereinafter collectively "the Petitioners")  
5 seek a declaration that the Respondent City of Bakersfield (hereinafter "the  
6 City") violated the provisions of the Ralph M. Brown Act, California's open  
7 meeting law (Government Code section 54950 et seq.; hereinafter "the Brown  
8 Act") applicable to local government agencies. Petitioners seek a writ of  
9 mandate prohibiting future violations of the Brown Act and an order  
10 compelling the City to tape record all closed sessions for a period of three  
11 years to ensure future compliance with the Brown Act. Petitioners also seek  
12 a declaration that the City has violated the Public Records Act (Government  
13 Code section 6250 et seq.) by failing to provide non-exempt documents  
14 requested by Petitioners pursuant to that act. Petitioners also seek a writ  
15 of mandate to compel the City to search for and disclose all records  
16 responsive to Petitioners' written request.

17 At issue in this case are three closed sessions held by the governing  
18 board of the City, the City Council, and documents provided to the City  
19 Council in those closed sessions. Those meetings were held on July 9,  
20 September 6 and September 20, 2017. Each of the closed sessions was listed  
21 on the City Council's agenda under conference with legal counsel to discuss  
22 potential litigation as authorized by Government section 54956.9(d)(2),  
23 (e)(1).<sup>1</sup>

24 This provision of the Brown Act authorizes a legislative body to meet  
25 in closed session with legal counsel when "[a] point has been reached where,  
26 in the opinion of the legislative body of the local agency on the advice of

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27  
28 <sup>1</sup> All further statutory references are to the Government Code unless  
otherwise stated.



1 its legal counsel, based on existing facts and circumstances, there is a  
2 significant exposure to litigation against the local agency." This section  
3 goes on to limit the "existing facts and circumstances" to certain  
4 situations, including "[f]acts and circumstances that might result in  
5 litigation against the local agency but which the local agency believes are  
6 not yet known to a potential plaintiff or plaintiffs, which facts and  
7 circumstances need not be disclosed."

8 Following the three City Council meetings, Petitioner First Amendment  
9 Coalition sent the City a written request, dated October 18, 2017, for  
10 certain public records:

11 1. All communications or other documents that were created, sent or  
12 received by the City Council and/or its individual members and that relate to  
13 or reference the materials enclosed with this letter;<sup>2</sup> and

14 2. All communications or other documents that were created, sent or  
15 received by the City Council and/or its individual members before or after  
16 the City Council meetings of July 9, September 6 and September 20, 2017 and  
17 that concern actions to be taken as a result of any items discussed during  
18 closed session on those dates.

19 First Amendment Coalition's letter also included a demand that the City  
20 cease and desist from further violations of the Brown Act (Exhibit E).<sup>3</sup>

21 Petitioner Californians Aware sent a similar letter dated October 9,  
22 2017 (Exhibit F).<sup>4</sup>

23  
24  
25 <sup>2</sup> The letter included materials described below that were provided by  
26 Assistant City Manager Chris Huot to members of the City Council by email  
27 dated October 5, 2017. While it is unclear how the Petitioners obtained  
28 these documents they formed the impetus for Petitioners' request for  
documents related to these three closed sessions.

<sup>3</sup> References to exhibits are those attached to the Declaration of Kelly  
Aviles in support of the writ filed October 17, 2019.

<sup>4</sup> Respondent's objection to Exhibit F is overruled.

1       The City's response to the Public Records Act request included  
2 materials that had been provided to the City Council members at the three  
3 meetings in question but did not include the documents provided to the City  
4 Council by Assistant City Manager Chris Huot (Exhibit I).<sup>5</sup>   The City also  
5 denied that the actions of the City Council at the three closed sessions  
6 violated the Brown Act (Exhibits G and H).<sup>6</sup>

7       Petitioners subsequently filed their action on December 21, 2017.

8       On January 2, 2019, the Court considered the Petitioners' motion to  
9 compel further responses to form interrogatories, special interrogatories and  
10 requests for production of documents. On January 4, 2019 the Court issued a  
11 written decision granting the Petitioners' motion and ordered further  
12 responses to interrogatories and the production of documents. The Court  
13 included in its order that if the City believed the document sought were  
14 privileged it may assert the privilege and provide a privilege log to  
15 Petitioners with sufficient factual information for the parties to evaluate  
16 the merits of the claim and seek further judicial relief as necessary.

17       The City's subsequent response (Exhibit V) did include a privilege log  
18 which asserted attorney-client and attorney work product privileges for the  
19 notes of the City Attorney taken during the three closed sessions (Exhibit  
20 W). Other than the notes of the City Attorney for which the privileges were  
21 asserted, the City responded to the discovery requests without objection.<sup>7</sup>

22  
23  
24       <sup>5</sup> The Court notes that neither letter to Petitioners asserts that any  
25 responsive documents to the records request were withheld due to their being  
26 privileged. A subsequent letter from the City Attorney's office claimed the  
records held by Petitioners were privileged under Government Code section  
54956.9 [Exhibit L].

27       <sup>6</sup> Respondent's objection to Exhibit H is overruled.

28       <sup>7</sup> During oral argument, Petitioners requested that the Court include the  
City Attorney's notes from closed session in any order requiring documents to  
be released to them. The Court declines that request as the documents are  
privileged and no evidence has been presented to indicate otherwise.



1 Included in the responses to requests for production of documents were  
2 the documents that were provided to the City Council in the three closed  
3 sessions that are the subject of this proceedings. These documents are  
4 contained in Exhibit X and are identified as Bates Stamped Document Nos.  
5 000150-000211.<sup>8</sup> Within these identified documents are the following.

6 An email from Assistant City Manager Chris Hout dated October 5, 2017  
7 which states in relevant part:

8 A request has been made to staff to provide copies of the  
9 presentations regarding the fiscal outlook matters that were  
10 discussed during closed sessions on July 19, September 6 and  
11 September 20. Attached are the slides that were presented at  
12 each of the closed sessions. Please let me know if you have any  
13 technical difficulties with the attachments.

14 (Bates Stamp No. 000150)

15 The documents which follow the email are an undated series of slides which  
16 are under a cover sheet titled "City of Bakersfield Five Year Budget  
17 Projections of Revenues and Expenses" (Bates Stamp Nos. 000151-000168), a  
18 series of slides that follow a cover sheet titled "Revenue Generation  
19 Discussion 7/19/2017" (Bates Stamp Nos. 000169-000189), a series of slides  
20 that follow a cover sheet titled "Revenue Discussion September 6, 2017"  
21 (Bates Stamp Nos. 000190-000198), and a series of slides that follow a cover  
22 sheet titled "Revenue Discussion 9/20/17 (Bates Stamp Nos. 000199-000211).  
23  
24

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25 <sup>8</sup> Respondent objects to the use of Exhibit X on the basis that the  
26 documents cannot be authenticated. The objection is overruled. The  
27 documents were provided by the City in a verified response to discovery  
28 requests that asked for documents presented to the City Council as part of  
the closed session in question. The City also belatedly asserts the  
documents are subject to the attorney-client privilege. As noted, its  
response to the discovery requests indicated an assertion of privilege only  
with respect to the notes of the City Attorney.

1       The first series of slides generally discusses the City's revenue and  
2 budget projects for the next five years and provides certain assumptions and  
3 alternative scenarios. The slide presentation ends with a slide that asks  
4 the question "How do we solve the Gap [between revenue and expenses]?"  
5 followed by the answer: "Either cut staffing levels or increase General  
6 Revenues."

7       The next series of slides for the September 6 closed session generally  
8 reviews the various revenue-generating vehicles that are available to the  
9 City and the potential revenue available to the City from each. Of note is  
10 the "Overview" slide (Bates Stamp No. 000170) which states in the first  
11 bullet point: "Previous closed session discussion on topic led to Council's  
12 request for additional information on the types of potential tax measures and  
13 revenue estimates."

14       The third series of slides for the September 20, 2017 closed session  
15 begins with a recap of the following: growth in major general fund revenue  
16 sources is lagging expenses, there are significant known cost increases on  
17 the horizon due to increases in retirement expenses, healthcare costs and  
18 utilities, service needs continue to grow, the City Council's goals for  
19 maintaining and enhancing public services, and City employees have not  
20 received wage increases since 2014 or 2015, depending on the employee group.  
21 The following slides review steps the City has already taken with respect to  
22 aligning general fund expenses and revenues and provides options for  
23 additional steps to reduce costs, including hiring freezes, staff reductions  
24 and closing of City facilities. The slides also describe new revenue  
25 opportunities, focusing on a sales tax and/or a parcel tax as two potential  
26 revenue opportunities. The final slide describes the next steps being  
27 recommended to the City Council. The bullet points presented are:

- 28       • Additional staff research and/or Council discussion

- 1       • If Council is interested in pursuing, early 2018 is recommended
- 2       target to begin formal process
- 3       • Engage a consultant for survey research
- 4           ➤ Help provide the Council and staff with a clear understanding
- 5           of the opinions, perceptions, priorities, and behaviors of
- 6           voters

7 (Bates Stamp No. 000198.)

8       The final set of slides begins with a slide labeled "Follow Up" (Bates  
9 Stamp No. 000200) with the following bullet points:

- 10       • Overview of consultant services
- 11       • Additional budgetary information
- 12       • Detailed "Cut" Scenarios
- 13       • Gas Tax Information
- 14       • Timeline

15       The slides that follow provide detailed information concerning each of the  
16 bullet points. Five slides describe the role of consultants in considering a  
17 sales tax measure and the potential costs associated with those activities.

18 (Bates Stamp Nos. 000201-000205) The following slide discusses budget  
19 projections (Bates Stamp No. 000206), followed by a discussion of the  
20 probable service-related cuts that will be necessary if a tax measure is not  
21 successful (Bates Stamp No. 000207-000208). The penultimate slide includes a  
22 proposed time line to place a tax measure on the ballot for voter approval  
23 (Bates Stamp No. 000210.) The final slide asks for "Questions?" (Bates Stamp  
24 No. 000211).

- 25       1. The Brown Act Claim.

26       Petitioners allege the City violated the provisions of the Brown Act by  
27 discussing the budget-related matters described in the slides presented to  
28



1 the City Council in closed session on July 9, September 6 and September 20,  
2 2017. The City states that the actual discussion in closed session "solely  
3 concerned legal advice and counsel" and asserts any discussion of budget-  
4 related matters was ancillary to the purpose and intent of the actual  
5 discussions with legal counsel as permitted by the Brown Act.

6 The purpose of the Brown Act is to facilitate public participation in  
7 local government decisions and to curb misuse of the democratic process by  
8 secret legislation by public bodies. (*Cohan v. City of Thousand Oaks* (1994)  
9 30 Cal.App.4th 547, 555.) To accomplish this, the Brown Act imposes an "open  
10 meeting" requirement on local legislative bodies. (§ 54953 (a); *Boyle v. City*  
11 *of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116.)

12 The Brown Act also contains specific exceptions from the open meeting  
13 requirements where government has a demonstrated need for confidentiality.  
14 The courts have construed these exceptions narrowly; thus if a specific  
15 statutory exception authorizing a closed session cannot be found, the matter  
16 must be conducted in public regardless of its sensitivity. (§ 54962; *Rowen v.*  
17 *Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 234; 68  
18 Ops.Cal.Atty.Gen. 34, 41-42 (1985).)

19 Where matters are not subject to a closed meeting exception, the Brown  
20 Act has been interpreted to mean that all of the deliberative processes by  
21 legislative bodies, including discussion, debate and the acquisition of  
22 information, be open and available for public scrutiny. *Sacramento Newspaper*  
23 *Guild v. Sacramento County Bd. of Suprs.* (1968) 263 Cal.App.2d 41; 42  
24 Ops.Cal.Atty.Gen. 61, 63 (1963); 32 Ops.Cal.Atty.Gen. 240 (1958).

25 While the parties dispute whether there was a sufficient basis for the  
26 City Council to meet in closed session pursuant to the requirements of  
27 section 54956.9(d)(2), (e)(1), the Court does not need to reach that issue to  
28 determine whether a Brown Act violation occurred during the three subject

1 closed sessions. The provision of the Brown Act relied on by the City  
2 authorizes legislative bodies to conduct closed sessions with their legal  
3 counsel to discuss pending litigation when discussion in open session would  
4 prejudice the agency in that litigation. Based on the Declaration of  
5 Virginia Gennaro, the City Attorney, legal counsel for the City believed  
6 there were sufficient facts and circumstances to justify a closed session  
7 under subdivisions (d)(2) and (e)(1) of section 54956.9. The agenda language  
8 that appears on the City Council's agenda for the three meetings in question  
9 is consistent with the requirements of the Brown Act. The issue is whether  
10 discussion of the three power point presentations exceeded the scope of the  
11 permitted under section 54956.9.

12 To determine whether there has been a violation of the Brown Act, the  
13 Court is guided by several general principles. First, that "[s]tatutory  
14 exceptions authorizing closed sessions of legislative bodies are construed  
15 narrowly, and the Brown Act "sunshine law" is construed liberally in favor of  
16 openness in conducting public business." (*Shapiro v. Board of Directors of*  
17 *Centre City Development Corp.* (2005) 134 Cal.App.4th 170,180-181, quoting  
18 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 917; see also  
19 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 378 ("Roberts") [1987  
20 amendment to Brown Act "was intended to make it clear that closed sessions  
21 with counsel could only occur as provided in the Brown Act"]; *Wolfe v. City*  
22 *of Fremont* (2006) 144 Cal.App.4th 533, 545 [the Brown Act is a remedial  
23 statute that must be construed liberally so as to accomplish its purpose]; 71  
24 Ops.Cal.Atty.Gen. 96, 105 (1988) ["Litigation exceptions to the Ralph M.  
25 Brown Act's open meeting requirements ... must be strictly construed"].)

26 Further, it is a fundamental principle of the Brown Act that its open  
27 meeting requirements encompass not only actions taken, but also fact finding  
28 meetings and deliberations leading up to those actions. (See § 54950 ["It is



1 the intent of the [Brown Act] that [public agency] actions be taken openly  
2 and that their deliberations be conducted openly"]; *Roberts, supra*, 5 Cal.4<sup>th</sup>  
3 at p. 375; *Frazer v. Dixon Unified School Dist.* (1993) 18 Cal.App.4th 781,  
4 794; 63 Ops.Cal.Atty.Gen. 820, 825 (1980) ["[T]he intent of the act was that  
5 deliberations as well as actions be taken openly"].) "Deliberation in this  
6 context connotes not only collective decision making, but also 'the  
7 collective acquisition and exchange of facts preliminary to the ultimate  
8 decision.' " (216 *Sutter Bay Assocs. v. County of Sutter* (1997) 58  
9 Cal.App.4th 860, 877.)

10 The City argues that the presentation of financial information to the  
11 City Council during closed session was "ancillary" to the purpose of the  
12 closed sessions and the actual discussion. The City Attorney explains in here  
13 declaration that "it was necessary to make a short presentation of pertinent  
14 facts which were involved in the subject litigation exposure." (Declaration  
15 of Virginia Gennaro, page 4, lines 16-17. The record before the Court belies  
16 those assertions.

17 In evaluating the slides presented to the City Council over the course  
18 of the three closed sessions, it is clear that the discussion of the issues  
19 before the City Council included significant issues related to its future  
20 budget and the concerns of the City Manager's office regarding addressing the  
21 potential shortfall in revenues to meet the existing demands for service.  
22 The first set of slides covers the general issue of revenue and service need  
23 projections over the next five years.

24 The Court notes that the City Manager presented a similar set of slides  
25 to the City Council at its October 11, 2017 regular meeting under the agenda  
26 item for "Fiscal outlook update." It is telling that a similar fiscal  
27 outlook update was presented at an open session of the City Council several  
28 weeks after it had been presented at a closed session related to "litigation



1 exposure." The information presented in open session closely tracks that  
2 presented in closed session with a few exceptions suggesting that there is  
3 little, if any, connection to any litigation exposure. For example, the  
4 closed session version of the fiscal outlook contains stark options for  
5 closing the gap between revenues and expenditures: either cut staffing levels  
6 or increase general revenues. (Bates Stamp No. 000157.) These options are  
7 worded differently for purposes of the open session discussion of this  
8 matter.

9 The fact that material may be sensitive, embarrassing or controversial  
10 does not justify application of a closed session unless it is authorized by  
11 some specific exception. *Rowen v. Santa Clara Unified School District* (1981)  
12 121 Cal.App.3d 231, 235. Rather, these characteristics may be further  
13 evidence of the need for public scrutiny and participation in discussing such  
14 matters.

15 The next set of slides for the September 6, 2017 closed session presents  
16 the potential alternatives for increasing general fund revenues. Particularly  
17 revealing is the "Overview" slide (Bates Stamp No. 000170) which states in  
18 the first bullet point: "*Previous closed session discussion on topic* led to  
19 Council's request for additional information on the types of potential tax  
20 measures and revenue estimates." (Emphasis added.) It is a reasonable  
21 inference from this slide that the City Council discussed the problems posed  
22 by the first set of slides presented at the July 19 closed session, requested  
23 potential solutions from the City Manager and the presentation made at the  
24 September 6 closed session is in response. The September 6 power point  
25 covers the range of potential general revenue sources available to the City  
26 to increase its revenue stream.

27 The final set of power point slides presented at the September 20 closed  
28 session detail the steps necessary for the passage of a sales tax measure and

1 the contain specific proposals regarding retention of consultants and a  
2 timeline for presentation of a sales tax proposal to the voters.

3 It is also worth noting that none of these slides contain any  
4 information that could remotely be considered to be the advice of counsel.  
5 The slides that were presented relate solely and specifically to budget  
6 issues, sources of additional revenue and the potential implementation of a  
7 proposal to place a sales tax measure on the ballot, including retention of  
8 consultants to determine voter interest. These issues are clearly outside  
9 the limited scope of the closed session related to potential litigation under  
10 section 54956.9 and the presentation and discussion of those issues  
11 constitutes a violation of the Brown Act.

12 It is not the intention of the closed session exceptions to the Brown  
13 Act to permit any wide-ranging discussion of issues that might come up during  
14 the closed session. The purpose of the closed session relied on by the City  
15 is limited to the discussion of potential litigation. To permit the City  
16 Council to use this exception as a subterfuge to allow the discussion of the  
17 City's critical budget issues, the potential solutions to those issues,  
18 impacts on City revenues, and potential staff layoffs and curtailing of  
19 services would allow the exception created by section 54956.9 to swallow the  
20 rule.

21 Rather, as stated above, the exceptions to the Brown Act are to be  
22 construed narrowly to allow maximum public access to the decision making  
23 process of the legislative body. This decision making process clearly  
24 includes the presentation of information and the acquisition and exchange of  
25 facts preliminary to the ultimate decision to the legislative body even  
26 though no action is taken. Given the nature of the information presented to  
27 the City Council during the three closed sessions in question, those  
28 presentations were part of the acquisition and exchange of information that



1 ultimately led to the City Council's public decision to proceed with a sales  
2 tax measure. Whether the City Council received and ultimately acted on the  
3 recommendations of the City Manager in open session does not minimize the  
4 fundamental violation of the Brown Act that occurred here.

5 Having determined that the presentation of information during the closed  
6 sessions related to budget issues, the proposal for implementation of a sales  
7 tax and the hiring of consultants held July 19, September 6 and September 20,  
8 2017 violated the Brown Act, the next issue for the Court is the relief to be  
9 granted to Petitioners. Petitioners seek a writ of mandate prohibiting  
10 future violations of the Brown Act and an order compelling the City to tape  
11 record all closed sessions for a period of three years to ensure future  
12 compliance with the Brown Act.

13 The violations have occurred over a series of three meetings and  
14 involved the future of City services and the potential for proposing a sales  
15 tax increase, issues of significant public importance. Accordingly, it is  
16 clear the City has demonstrated a pattern of past conduct that indicates the  
17 existence of potential future violations. *Shapiro v. San Diego City Council*  
18 (2002) 96 Cal.App.4th 904; *Duval v. Board of Trustees* (2001) 93 Cal.App.4th  
19 902, 906. Moreover, the City has been adamant that it has not violated the  
20 Brown Act by considering these issues in closed session. In light of that,  
21 the Court may presume that the City will continue similar practices absent  
22 the court's intervention. *Common Cause v. Stirling* (1983) 147 Cal.App.3d  
23 518, 524.

24 Therefore, the Court grants the writ prohibiting the City from further  
25 violations of the Brown Act and orders that the City tape record all closed  
26 sessions for a period of one year to ensure future compliance with both the  
27 letter and spirit of the Brown Act. The Court recognizes the policies and  
28 procedures in place regarding Brown Act compliance that are detailed in the



1 City's response; however, the violation of the Brown Act regarding such  
2 significant issues causes the Court to impose the recording requirement.  
3 Additionally, Petitioners are entitled to an award of attorney's fees and  
4 costs of suit pursuant to Government Code section 54960.5 and Code of Civil  
5 Procedure section 1021.5. The amount of attorney's fees will be determined  
6 pursuant to noticed motion.

7 2. The Public Records Act Claim.

8 The fundamental principle of California's Public Records Act is that  
9 government records are required to be disclosed to the public, upon request,  
10 unless there is a specific reason to do so. Government Code section 6253.

11 Here, Petitioner Californians Aware served the City with a request for  
12 records pursuant to the Public Records Act by letter dated October 9, 2017.  
13 (Exhibit F in support of the Petition.) This letter requested "access to  
14 copies of all communications or other documents created or received by the  
15 City or City Council members or staff before or after these meeting [of July  
16 9, September 6 and September 20, 2017] concerning actions to be taken as a  
17 result thereof."

18 Petitioner First Amendment Coalition made a similar request by letter  
19 dated October 18, 2017 (Exhibit E). Specifically, Petitioner requested the  
20 following records:

21 1) All communications or other documents that were created, sent or  
22 received by the City Council and/or its individual members and that relate to  
23 or reference the materials enclosed with this letter; and

24 2) All communications or other documents that were created, sent or  
25 received by the City Council and/or its individual members before or after  
26 the City Council meetings of July 9, September 6 and September 20, 2017.

1 By letter dated October 23, 2017, The Office of the City Attorney  
2 responded to the request for records by providing certain documents (Exhibits  
3 I and J). As stated in that letter: "Responsive documents are attached."

4 The Public Records Act affords agencies a variety of discretionary  
5 exemptions which they may utilize as a basis for withholding records from  
6 disclosure. When an agency withholds a record because it is exempt from  
7 disclosure, the agency must notify the requester of the reasons for  
8 withholding the record. Government Code section 6255 states:

9 (a) The agency shall justify withholding any record by  
10 demonstrating that the record in question is exempt under express  
11 provisions of this chapter or that on the facts of the particular  
12 case the public interest served by not disclosing the record  
13 clearly outweighs the public interest served by disclosure of the  
14 record.

15 (b) A response to a written request for inspection or  
16 copies of public records that includes a determination that the  
17 request is denied, in whole or in part, shall be in writing.

18 Here, the City did not claim any of the documents responsive to the  
19 request for records was exempt.

20 After a follow-up letter from Petitioner First Amendment Coalition  
21 regarding the claim that the City had failed to properly respond to the  
22 request (Exhibit I), the City responded by asserting that because Petitioner  
23 already had the records "we did not see the need in providing them again" and  
24 also asserting the records were confidential pursuant to Government Code  
25 section 54956.9 (Exhibit K).

26 Statutory exemptions from compelled disclosure under the Public Records  
27 Act are to be narrowly construed and the government agency opposing  
28 disclosure bears the burden of proving that one or more of the exemptions

1 apply in a particular case. Gov't Code section 6255(a); *Caldecott v.*  
2 *Superior Court* (2015) 243 Cal.App.4<sup>th</sup> 212 (hereinafter "*Caldecott*").

3 The City's first rationale for refusing to disclose additional  
4 documents is contrary to the court's ruling in *Caldecott*. *Caldecott* held that  
5 a public agency's claim of mootness because the plaintiff already had copies  
6 of the documents "completely misses the point" since the issue is not current  
7 possession but making the documents public through the CPRA process].) *Id.* at  
8 p. 219. Here, whether Petitioners are in possession of some or even all the  
9 documents as a result having previously obtained them or having obtained them  
10 through discovery responses in this case, the documents requested by  
11 Petitioners have never been disclosed or released to them by the City as a  
12 public record under the Public Records Act.

13 The City also asserted the documents withheld from its Public Records  
14 Act response to Petitioners were confidential pursuant to Government Code  
15 section 54956.9. Section 54956.9 is within the Brown Act and provides, as  
16 discussed above, the authority for a legislative body to meet in closed  
17 session regarding pending litigation. While this section is not part of the  
18 Public Records Act, the Court will construe the statement as being an  
19 assertion of the attorney-client privilege as the documents were presented to  
20 the City Council during a closed session authorized by Government Code  
21 section 54956.9.

22 The attorney-client privilege covers confidential communications  
23 between an attorney and his or her client. The privilege applies to  
24 litigation and nonlitigation situations. The privilege appears in section 954  
25 of the Evidence Code and is incorporated into the Public Records Act through  
26 section 6254(k). However, not every writing or document transmitted to a  
27 lawyer becomes confidential communication. Writings or documents may be  
28 prepared for a purpose other than furnishing counsel with confidential



1 information. The privilege does not cover these types of documents. *Suezaki*  
2 *v. Superior Court* (1962) 58 Cal.2d 166, 176. Given the nature of the  
3 documents sought by the Petitioners and the lack of any connection to  
4 litigation or confidentiality in light of the Court's ruling on the Brown Act  
5 violations, the documents that were sought by Petitioners are not covered by  
6 the privilege and should have been provided to Petitioners. The City cannot  
7 shield what would otherwise be public documents by presenting them to the  
8 City Council under the guise of closed session.

9 Accordingly, the Court grants Petitioners' writ and orders the City to  
10 release the requested documents to Petitioners as required by the Public  
11 Records Act. Additionally, Petitioners are entitled to an award of  
12 attorney's fees and costs pursuant to Government Code section 6259. The  
13 amount of attorney's fees will be determined pursuant to noticed motion.

14 Petitioners to prepare an order for signature by the Court.  
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