STAFF REPORT

MEETING
DATE: August 16, 2016

TO: City Council

FROM: Cathy Capriola, Interim City Manager

SUBJECT: DISCUSSION AND DIRECTION REGARDING SCHEDULING AN AGENDA ITEM TO HAVE STAFF GIVE A PRESENTATION ON THE RALPH M. BROWN ACT, CALIFORNIA’S OPEN MEETING LAW, AND DISCUSS OPTIONS RELATED TO CLOSED SESSIONS IN THE CITY OF NOVATO

REQUEST

If desired, and as provided in Section 3.02 of the City Council Policy Manual, schedule a presentation on a future agenda regarding the Ralph M. Brown Act (“Brown Act”), California’s open meeting law, and discuss options related to closed sessions in the City of Novato. In addition, provide input on the desired level of staff resources to be used and background research desired.

RECOMMENDATION

Provide direction to staff.

DISCUSSION

At the City Council’s quarterly agenda setting work session held on January 12, 2016, Mayor Eklund requested, and received majority support, to add an item to a future agenda to have a presentation on the Brown Act, and discuss and possibly change the City’s practices with respect to closed sessions.

Specifically, Mayor Eklund requested (1) a presentation on the Brown Act by the City Attorney to the City Council, members of Novato’s boards and commissions and the public, to hear the latest updates to gain a common understanding of the Brown Act and various interpretations, (2) what issues to be discussed in closed session, (3) whether closed session meetings should be recorded, (4) whether the City Council should adopt policies that are stricter than the Brown Act for the purposes of holding a closed session, and (5) any other issues related to the Brown Act that come forward during the discussion.

Preparation and delivery of a presentation on the Brown Act by the City Attorney would likely require up to 6 hours of billed time. A few hours of City staff time to set up and coordinate the presentation event (with participation likely mandated for board and commission members) would be anticipated. Without further discussion of Council expectations, it is not possible to estimate
the amount of time that might be needed in research, such as surveying policies and practices in other cities and agencies.

Attachment 1 of this report is a summary of the purpose of the Brown Act from the State Attorney General’s Office. In general, as defined in the Brown Act, the most common purpose of a closed session is to avoid revealing confidential information that may, in specific instances, prejudice the legal or negotiating position of the City or compromise the privacy of employees. Closed session items are briefly described on the posted meeting agenda and state the specific statutory exemption. The Brown Act provides a series of closed session agenda descriptions for various types of authorized closed sessions, and which cover a variety of topics.

The complete Brown Act is contained in Sections 54950-54963 of the Government Code. A link is provided below as Attachment 4 for easy reference. Also included for reference, as Attachments 2 and 3, are links to the most recent League of California Cities guide to the Brown Act and the most recent California Attorney General’s guide for local governments.

FISCAL IMPACT

Depends on Council direction.

ALTERNATIVES

Propose alternative recommendations or strategies.

ATTACHMENTS

1. Excerpt from 2003 California Attorney General’s Office “The Brown Act – Open Meetings for Local Legislative Bodies – Chapter 1 Purpose


3. “The Brown Act: Open Meetings for Local Legislative Bodies 2003” (California Attorney General's Office) - Available Online

4. California Government Code Section 54950-54963 - Available Online
Chapter I. Purpose and Scope

The Ralph M. Brown Act (Gov. Code, § 549501 et seq., hereinafter “the Brown Act,” or “the Act”) governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils and school boards. The Act represents the Legislature’s determination of how the balance should be struck between public access to meetings of multi-member public bodies on the one hand and the need for confidential candor, debate, and information gathering on the other. As the rest of this pamphlet will indicate, the Legislature has established a presumption in favor of public access. As the courts have stated, the purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (Cohan v. City of Thousand Oaks (1994) 30 Cal.App.4th 547, 555.) To these ends, the Brown Act imposes an “open meeting” requirement on local legislative bodies. (§ 54953(a); Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116.)

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

Where matters are not subject to a closed meeting exception, the Act has been interpreted to mean that all of the deliberative processes by legislative bodies, including discussion, debate and the acquisition of information, be open and available for public scrutiny. (Sacramento Newspaper Guild v. Sacramento County Bd. of Suprs. (1968) 263 Cal.App.2d 41; 42 Ops.Cal.Atty.Gen. 61, 63 (1963); 32 Ops.Cal.Atty.Gen. 240 (1958).) The Act only applies to multi-member bodies such as councils, boards, commissions and committees since, unlike individual decision makers, such bodies are created for the purpose of reaching collaborative decisions through public discussion and debate.

A host of provisions combine to provide public access to the meetings of legislative bodies. For example, the times and dates of all meetings must be noticed and an agenda must be prepared providing a brief general description of all matters to be discussed or considered at the meeting. (§§ 54954, 54954.2.) As a precondition to attending the meeting, members of the public may not be asked to provide their names. (§ 54953.3.) While in attendance, members of the public may make video or audio recordings of the meeting. (§ 54953.5.) As a general rule, information given to a majority of the members of the legislative body in connection with an open meeting must be equally available to members of the public. (§ 54957.5.) Before or during consideration of each agenda item, the public must be given an opportunity to comment on the item. (§ 54954.3(a).) 1 All statutory references are to the Government Code except as otherwise indicated. 1 While the Act creates broad public access rights to the meetings of legislative bodies, it also recognizes the legitimate needs of government to conduct some of its meetings outside of the public eye. Closed session meetings are specifically defined and are limited in scope. They primarily involve personnel issues, pending litigation, labor negotiations and real property acquisitions. (§§ 54956.8,
Each closed-session meeting must be preceded by a public agenda and by an oral announcement. (§§ 54954.2, 54957.7.) When final action is taken in closed session, the legislative body may be required to report on such action. (§ 54957.1.)