



**SCOTIA COMMUNITY SERVICES DISTRICT
NOTICE IS HEREBY GIVEN THAT A
REGULAR MEETING
OF THE BOARD OF DIRECTORS**

**WILL BE HELD AT: 122
MAIN STREET
SCOTIA, CALIFORNIA**

**Thursday, May 17, 2018
Regular Meeting at 5:30 P.M.**

AGENDA

- A. CALL TO ORDER/ ROLL CALL/ PLEDGE OF ALLEGIANCE** The Presiding officer will call the meeting to order and call the roll of members to determine the presence of a quorum.
- B. SETTING OF AGENDA**
The Board may adopt/ revise the order of the agenda as presented.
- C. CONSENT CALENDAR**
 - 1. Approval of Previous Meetings Minutes**
April 19, 2018 p. 3
 - 2. Approval of April 1, 2018 – April 30, 2018 Check Registers** p. 7
- D. PUBLIC COMMENT & WRITTEN COMMUNICATION**
Regularly scheduled meetings provide an opportunity for members of the public to directly address the SCSD Board Members on any action item that has been described in the agenda for the meeting, before or during consideration of that item, or on matters not identified on the agenda within the Board jurisdiction. Comments are not generally taken on non-action items such as reports or information. Comments should be limited to three minutes.
- E. PUBLIC HEARING –**
 - 1. Benefit Assessments Annual Reports** p. 11
 - a. Storm Drainage**
 - b. Streets and Street Lighting**
 - c. Parks & Recreation**
- F. BUSINESS**
 - 1. New Business –**
 - a. Scotia Community Services District Legal Representation Request for Proposals for Fiscal Year 2018-19** p. 15
 - b. Brown Act Training** p. 27
 - c. Playground Equipment Sale**
 - d. Redwood Log Cut Loan**

2. Old Business –

a. FY 2018-19 Draft Budget Review #2

p. 55

G. REPORTS

No specific action is required on these items, but the Board may briefly discuss any particular item raised.

- 1. President's Report:**
- 2. Board Director Reports:**
- 3. General Manager's Report:**
- 4. Special Counsel's Report:**
- 5. Engineer's Report:**
- 6. Fire Chief's Status Report:**
- 7. Board Clerk Report:**

H. ADJOURNMENT

Next Regular Meeting of the SCSD will be June 21th, 2018 at 5:30 PM.

Notice regarding the Americans with Disabilities Act: The District adheres to the [Americans with Disabilities Act](#). Persons requiring special accommodations or more information about accessibility should contact the District Office. Notice regarding Rights of Appeal: Persons who are dissatisfied with the decisions of the SCSD Board of Directors have the right to have the decision reviewed by a State Court. The District has adopted [Section 1094.6](#) of the [Code of Civil Procedure](#) which generally limits the time within which the decision may be judicially challenged to 90 days.

Minutes of the REGULAR Board Meeting for the
Scotia Community Services District
Thursday, April 19, 2018 at 5:30 P.M.

A. CALL TO ORDER/ ROLL CALL/ PLEDGE OF ALLEGIANCE

The regular meeting of the Board of Directors of the Scotia Community Services District convened at 5:31pm with the following directors in attendance:

Diane Bristol	Director – Present
Paul Newmaker	Director – Present
Scott Pitcairn	Director – Present
Susan Pryor	Director – Present
Rick Walsh	President – Present

Staff: L. Marshall, GM; S. Tyler, Assist. G M; J. Thomas; BC

B. SETTING OF AGENDA

No changes

C. CONSENT CALENDAR

1. Approval of Previous Meetings Minutes

March 15, 2018

March 29, 2018

2. Approval of March 1, 2018 – March 31, 2018 Check Registers

Director Pryor inquired about UB Max A/R Deposit. GM explained that it is our billing system. Board and staff discussed the use of UB Max vs. Quickbooks. GM explained that Quickbooks is not set up for the type of billing the District does. Director Pitcairn inquired about the \$15,000.00 PG&E bill. GM explained.

No public comment

Motion: To Approve Consent Calendar

Motion: Pryor Second: Bristol

**Motion Vote: Ayes - 5 Bristol, Newmaker, Pitcairn, Pryor, Walsh Opposed – 0 Absent – 0
Abstain - 0**

D. PUBLIC COMMENT & WRITTEN COMMUNICATION

Letter received from Dam Safety setting a new level for the log pond. Request for new level is inconsistent with the NPDES permit and does not appear to reflect the type of water body the log pond is. Following the seepage incident, the dam was reassessed from “Satisfactory” to “Poor”. A plan to address the issue related to the seepage needs to be in place by June 30th – but funds for that are not in the budget

State Dam safety has added new requirements for a safety plan by 2019 for inundation zones. Another letter from Dam Safety was received notifying the District of an increase in fees.

Board discussed that the dam within the District is more like a levee. Staff inquired with Justin McSmith of the Regional Water Quality Control Board about reclassifying the dam as a levee.

E. PUBLIC HEARING – NONE

F. BUSINESS

1. New Business –

a. FY 2018-19 Draft Budget Review #1

GM introduced item via staff report and noted that Benefits Assessments fees will be collected in June rather than December. GM discussed budget line by line. Board discussed.

Budget includes two full-time staff to be hired this FY and one part-time executive assistant to be hired next FY. Revenues are primarily from user fees.

Items highlighted in green are proposed to move forward, items in red are proposed to wait at this time.

It is recommended that the sodium hypochlorite systems for water and wastewater treatment be placed on hold. Staff cites concerns over cost and maintaining regulatory requirements.

Log pond maintenance will be used to repair dam seepage. GM explained some ideas for repairing the seepage.

Budget has a balance of \$565 – staff anticipates cost savings will increase with cost savings with electricity.

GM explained that we may be able to charge PG&E to actual user by initiating the pass-through clause for use of raw water pumps. Board discussed timeline of pump replacement by TOS – anticipating cost savings from that.

Board discussed cost of ADA upgrades for new SCSD office building – will be approximately \$3,000. Board also discussed timeline for move-in date.

Staff noted that the budget numbers are conservative.

No public comment.

b. Special District Risk Management Authority Workers Compensation

• Adopt Resolution 2018-4: A Resolution of the Board of Directors Approving the Form of and Authorizing the Execution of a Sixth Amended and Restated Joint Powers Agreement and Authorizing Participation in the Special District Risk Management Authority Workers' Compensation Program

GM introduced and explained that adding this coverage will qualify the District for multi-program coverage which will result in cost savings. GM explained quotes and costs for coverage.

GM explained Credit Incentive Program (CIP) helps reduce costs.

No public comment.

No Action taken.

Motion: To Adopt Resolution 2018-4: A Resolution of the Board of Directors Approving the Form of and Authorizing the Execution of a Sixth Amended and Restated Joint Powers Agreement and Authorizing Participation in the Special District Risk Management Authority Workers' Compensation Program

Motion: Newmaker **Second:** Pitcairn

Motion Vote: Ayes -5: Bristol, Newmaker, Pitcairn, Pryor, Walsh Opposed – 0 Absent – 0 Abstain - 0

• Complete State of California Application and Adopt Resolution 2018-5: Approval and completion of the State of California Application for a Public Entity Certificate of Consent to Self-Insure

GM explained and board discussed this item with the prior item.

No public comment.

Motion: To Adopt Resolution 2018-5: Approval and completion of the State of California Application for a Public Entity Certificate of Consent to Self-Insure

Motion: Bristol **Second:** Newmaker

Motion Vote: Ayes -5: Bristol, Newmaker, Pitcairn, Pryor, Walsh **Opposed** – 0 **Absent** – 0 **Abstain** - 0

c. Adopt Resolution 2018-6: Approving Regular Membership in the Humboldt Area Chapter of the California Special Districts Association

GM introduced item and explained again who CSDA is and that we are already members. The Humboldt Area Chapter provides a local venue for CSDA meetings, special district support, & training. President Walsh expressed his support.

Fiscal Impact: \$50 annually for membership; \$50 for acquisition of additional insured certificate.

No public comment

Motion: Adopt Resolution 2018-6: Approving Regular Membership in the Humboldt Area Chapter of the California Special Districts Association

Motion: Pryor **Second:** Bristol

Motion Vote: Ayes -5: Bristol, Newmaker, Pitcairn, Pryor, Walsh **Opposed** – 0 **Absent** – 0 **Abstain** - 0

- **Approve obtaining Certificate of Insurance Naming Humboldt Area Chapter of CSDA as Additionally Insured**

Action for this item included in previous item and approved in Resolution 2018-6.

No public comment

d. Upcoming CSDA Training (s)

Board clerk introduced and Board discussed. Director Pryor asked if we could complete on-demand trainings during board meetings. Completion of trainings contribute to Credit Incentive Program savings. Board clerk directed to set a goal/plan for completing as many CIPs as possible.

Staff are attending conferences this year. GM encourages the Board to attend the sexual harassment training in McKinleville in August.

No public comment.

Informational Item – No action taken.

2. Old Business – None

G. REPORTS

No specific action is required on these items, but the Board may briefly discuss any particular item raised.

1. President's Report:

President Walsh expressed concerns as to why we continue to pay for HRC's electricity use of the raw water pumps – the District is subsidizing HRC. Could use the pass-through clause to charge actual user of electricity. Another option is to go through a 218 process to increase raw water rates. This would only impact raw water users, and the only users of raw water are the District, and HRC – not residents. Residents receive finished water. HRC pays very little for raw water.

2. Board Director Reports:

Director Pryor asks if carpenter shop will be available for lease/sale soon? People may be interested in it. GM explained that we will likely not be looking to sell as we need the space for a corp yard for the District – but we may be interested in leasing. GM explained that SCSD owns it, TOS is using it for free in exchange for us using this current office space. Carpenter shop needs to be appraised.

Director Pryor brought in samples of plastic shakes for the theater roof replacement. SCT will bring another option to show the Board. Director Pryor asked about train equip. removal timeline. Meeting with Friends of #9 scheduled for 4/20/18.

3. General Manager's Report:

GM met with State Water Resources Control Board Drinking Water Division for a site inspection. All went well. GM gave them the completed TMF binder.

GM working on the water treatment annual report.

Escrow closed on the Daycare building on April 10th, 2018

GM explained that the District has been reclassified as a DUC by RCAC.

A fire services meeting was held in Rio Dell. The Rio Dell FPD is amenable to looking into the financial/cost options to provide fire protection to SCSD.

4. Special Counsel's Report: None

5. Engineer's Report: LM reported on behalf of Steve Davidson (SD). A potential drainage issue on private property was determined by SD to be the private property owner's responsibility. Deed and title were resubmitted by homeowner, SD will review those and respond to the homeowner.

6. Fire Chief's Status Report: None

7. Board Clerk Report:

a. Website: Content is ready – we are working through a transparency checklist to ensure that certain items are included on the website.

CSDA presenting a bill to State Legislature which will require all special districts to have a website. There may be a hardship clause in the final bill which may allow some districts to continue to operate without website if they qualify for the hardship clause.

Reminder for ethics certificates for President Walsh and Director Newmaker

H. ADJOURNMENT 7:19 PM By President Rick Walsh

Next Regular Meeting of the SCSD will be May 17, 2018 at 5:30 PM.

10:24 AM

05/15/18

Accrual Basis

Scotia Community Services District
Account QuickReport
As of April 30, 2018

Type	Date	Num	Name	Memo	Amount	Balance
10000 · RCB Checking 8239						559,233.68
Deposit	04/03/2018			Deposit HRC ACH	23,136.97	582,370.65
Bill Pmt -Check	04/03/2018	50214	AT&T		-103.72	582,266.93
Deposit	04/03/2018			UBMax A/R	8,208.63	590,475.56
Deposit	04/05/2018			UBMax A/R	332.25	590,807.81
Bill Pmt -Check	04/05/2018	50215	Johnson's Mobile H...	temp fence around train	-235.33	590,572.48
Bill Pmt -Check	04/05/2018	50216	North Coast Laborat...		-2,286.00	588,286.48
Bill Pmt -Check	04/05/2018	50217	NTU Technologies	1 275 Gal Tote Ploymer	-3,505.50	584,780.98
Bill Pmt -Check	04/05/2018	50218	Owsley Electric	Installed 120V circuit to new PLC cabinet, ins...	-1,541.21	583,239.77
Bill Pmt -Check	04/05/2018	50219	Pacific Paper	Cabinet locks,pilot pens, file sign-out, employ...	-289.56	582,950.21
Bill Pmt -Check	04/05/2018	50220	PG&E		-438.48	582,511.73
Bill Pmt -Check	04/05/2018	50221	Sequoia Personnel	T. Cannon WE 4.1.2018	-279.50	582,232.23
Bill Pmt -Check	04/05/2018	50222	SHN	NPDES, Water suppl pump, mapping, CAL APR	-3,183.25	579,048.98
Bill Pmt -Check	04/05/2018		Thatcher Company	QuickBooks generated zero amount transacti...	0.00	579,048.98
Bill Pmt -Check	04/05/2018	50223	Town of Scotia	February Labor billing	-9,295.00	569,753.98
Bill Pmt -Check	04/05/2018	50224	USA Blue Book		-522.20	569,231.78
Bill Pmt -Check	04/05/2018	50225	Wyckoff Plumbing	Bulbs, power strip, work light	-76.95	569,154.83
Deposit	04/05/2018			UBMax A/R	199.45	569,354.28
Check	04/09/2018	WIRE ...	Fidelity National Titl...	400 Church Street Escrow	-89,350.55	480,003.73
Bill Pmt -Check	04/10/2018	50226	Planwest Partners	March Services	-16,695.98	463,307.75
Deposit	04/11/2018			UBMax A/R	3,918.11	467,225.86
Check	04/12/2018	50227	Petty Cash	Reimburse fund	-64.53	467,161.33
Deposit	04/12/2018			Escrow Balance Due 400 Church	84.00	467,245.33
Deposit	04/18/2018			Deposit	804.47	468,049.80
Bill Pmt -Check	04/19/2018	50228	City of Fortuna	Coliform testing X 2	-50.00	467,999.80
Bill Pmt -Check	04/19/2018	50229	NTU Technologies	1 275 Gal Tote Polymer	-3,505.50	464,494.30
Bill Pmt -Check	04/19/2018	50230	SDRMA	7724	-70.15	464,424.15
Bill Pmt -Check	04/19/2018	50231	Sequoia Personnel		-984.75	463,439.40
Bill Pmt -Check	04/19/2018	50232	SHN	Various	-7,359.35	456,080.05
Bill Pmt -Check	04/19/2018	50233	Steves Septic	Regular load to Ferndale	-750.00	455,330.05
Bill Pmt -Check	04/19/2018	50234	Thatcher Company	402298	-662.14	454,667.91
Bill Pmt -Check	04/19/2018	50235	Town of Scotia	March Labor billing	-10,119.00	444,548.91
Bill Pmt -Check	04/19/2018	50236	AT&T		-203.85	444,345.06
Bill Pmt -Check	04/19/2018	50237	Recology Eel River	Recycling bin/service	-7.05	444,338.01
Deposit	04/19/2018			Water/Sewer payments	614.50	444,952.51
Bill Pmt -Check	04/19/2018	50238	Renner Petroleum	49589	-419.87	444,532.64
Deposit	04/24/2018			UBMax Water/Sewer Dep	7,867.36	452,400.00
Deposit	04/25/2018			UBMax Water/Sewer dep	1,947.17	454,347.17
Check	04/26/2018	50239	Sanders Roofing	Proposal #7477 Scotia Museum Deposit	-314.00	454,033.17
Deposit	04/30/2018			UBMax Water/Sewer pmnts	10,510.43	464,543.60
Total 10000 · RCB Checking 8239					-94,690.08	464,543.60
TOTAL					-94,690.08	464,543.60

10:27 AM

05/15/18

Cash Basis

Scotia Community Services District

Account QuickReport

All Transactions

Type	Date	Num	Name	Memo	Original Amount	Paid Amount	Balance
12000 · RCB Savings 0367							
General Journal	05/23/2017	0501		Opening Entry	50,000.00	50,000.00	50,000.00
Deposit	05/31/2017			Interest	0.11	0.11	50,000.11
Deposit	06/30/2017			Interest	3.51	3.51	50,003.62
Deposit	07/31/2017			Interest	4.25	4.25	50,007.87
Deposit	08/31/2017			Interest	4.25	4.25	50,012.12
Deposit	09/30/2017			Interest	4.11	4.11	50,016.23
Deposit	10/31/2017			Interest	4.25	4.25	50,020.48
Deposit	11/30/2017			Interest	4.11	4.11	50,024.59
Deposit	12/31/2017			Interest	4.25	4.25	50,028.84
Deposit	01/31/2018			Interest	4.25	4.25	50,033.09
Deposit	02/28/2018			Interest	3.84	3.84	50,036.93
Deposit	03/18/2018			Deposit of Bid on #9	56,240.00	56,240.00	106,276.93
Deposit	03/31/2018			Interest	6.80	6.80	106,283.73
Total 12000 · RCB Savings 0367						106,283.73	106,283.73
TOTAL						106,283.73	106,283.73

10:26 AM

Scotia Community Services District

05/15/18

Account QuickReport

Cash Basis

As of April 30, 2018

Type	Date	Num	Memo	Original Amount	Paid Amount	Balance
12100 · RCB Cust Deposit Savings 0797						2,700.33
Deposit	01/16/2018		221 Mill Street	100.00	100.00	2,800.33
Deposit	01/31/2018		Interest	0.14	0.14	2,800.47
Deposit	02/15/2018		404 Church Street / Fid...	100.00	100.00	2,900.47
Deposit	02/15/2018		401 Church St. Fidelity ...	100.00	100.00	3,000.47
Deposit	02/15/2018		405 Church Street pers...	100.00	100.00	3,100.47
Deposit	02/27/2018		418 Church Street fr Fi...	100.00	100.00	3,200.47
Deposit	02/28/2018		Interest	0.13	0.13	3,200.60
Deposit	03/08/2018		410 Church St./Fidelity ...	100.00	100.00	3,300.60
Deposit	03/08/2018		406 Church St./ Fidelity...	100.00	100.00	3,400.60
Transfer	03/27/2018		Transf Cornerstone/Wi...	100.00	100.00	3,500.60
Deposit	03/27/2018		356 Eddy Street	100.00	100.00	3,600.60
Deposit	03/27/2018		428 Church St.	100.00	100.00	3,700.60
Deposit	03/29/2018		206 Mill Lane water/se...	100.00	100.00	3,800.60
Deposit	03/31/2018		Interest	0.17	0.17	3,800.77
Deposit	04/05/2018		424 Church Street	100.00	100.00	3,900.77
Total 12100 · RCB Cust Deposit Savings 0797					1,200.44	3,900.77
TOTAL					1,200.44	3,900.77

10:25 AM

Scotia Community Services District

05/15/18

Account QuickReport

Accrual Basis

As of November 30, 2017

Type	Date	Num	Name	Memo	Amount	Balance
11000 · RCB CD 0929						
General Journal	05/23/2017	0501		Opening Entry	50,000.00	50,000.00
Deposit	06/30/2017			Deposit	10.27	50,010.27
Deposit	07/30/2017			Deposit	10.28	50,020.55
Deposit	08/31/2017			Deposit	10.62	50,031.17
Deposit	09/30/2017			Monthly Interest	10.62	50,041.79
Deposit	10/30/2017			Interest Earned	10.29	50,052.08
Deposit	11/30/2017			Deposit of Interest earned	10.62	50,062.70
Total 11000 · RCB CD 0929					50,062.70	50,062.70
TOTAL					50,062.70	50,062.70

Scotia Community Services District Staff Report

DATE: May 15, 2018

TO: Scotia Community Services District Board of Directors

FROM: Leslie Marshall, General Manager

SUBJECT: Benefit Assessment Annual Review

RECOMMENDATION:

Review each Benefit Assessment and rate schedule.

ACTION:

Review each Benefit Assessment and rate schedule.

DISCUSSION:

Streets and Street Lighting, and Parks and Recreation Benefit Assessments were adopted in June 2016, Storm Drainage Benefit Assessment was adopted in February 2017. All three assessments were adopted with a 5-year rate schedule with an annual 1.5% increase (See Rates Schedule). At the end of the 5 year rate schedule, the District will continue the Assessments at the FY 2020/2021 rate. The assessment may also be increased to an amount not to exceed 3% based on the consumer price index (CPI), and further adjusted for any pass through costs. Thus far, the District has only implemented the 1.5% annual escalation factor for benefit assessments.

Upcoming projects for each benefit assessment are projected within the Proposed FY 2018/2019 budget (in packet).

A profit and loss statement for each assessment is attached, with current standing for each assessment. All SCSD Funds will be audited beginning July 1, 2018 for the previous fiscal year operation, in this case including June 2017 (prior fiscal year), to include all SCSD operations beginning May 25, 2017. The audit should be complete prior to December 2018.

FISCAL IMPACT:

See fiscal budget FY 2018/2019, attached Rate Schedule, and attached Benefit Assessment Profit and Loss Report.

Water User Fees

Water Rates over the Initial 5-year Period					
	FY 16/17	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Monthly Base Rate per Meter Size					
5/8"	\$62.91	\$63.86	\$64.81	\$65.79	\$66.77
3/4"	\$94.37	\$95.79	\$97.23	\$98.69	\$100.17
1"	\$157.28	\$159.64	\$162.03	\$164.46	\$166.93
1 1/2"	\$314.56	\$319.28	\$324.07	\$328.93	\$333.86
2"	\$503.29	\$510.84	\$518.50	\$526.28	\$534.17
3"	\$943.67	\$957.83	\$972.19	\$986.78	\$1,001.58
4"	\$1,572.78	\$1,596.37	\$1,620.32	\$1,644.62	\$1,669.29
6"	\$3,145.57	\$3,192.75	\$3,240.64	\$3,289.25	\$3,338.59
8"	\$5,032.91	\$5,108.40	\$5,185.03	\$5,262.81	\$5,341.75
Monthly Commodity Rate					
Treated Water (per 100 cf water used)	\$2.66	\$2.70	\$2.74	\$2.78	\$2.82
Raw Water (per 100 cf water used)	\$0.23	\$0.23	\$0.24	\$0.24	\$0.24

Wastewater User Fees

Wastewater Rates over the Initial 5-year Period					
	FY 16/17	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Base Rate (per EDU)	\$75.25	\$76.38	\$77.53	\$78.69	\$79.87
Monthly Flow Rate					
Flow Rate (per 100 cf used)	\$4.11	\$4.18	\$4.24	\$4.30	\$4.37
Monthly Strength Rate					
BOD (per lb)	\$0.3626	\$0.3680	\$0.3736	\$0.3792	\$0.3849
TSS (per lb)	\$0.5414	\$0.5495	\$0.5578	\$0.5661	\$0.5746

Annual Benefit Assessments over the Initial 5-year Period					
	FY 16/17	FY 17/18	FY 18/19	FY 19/20	FY 20/21
Storm Drainage	\$22.32	\$22.65	\$22.99	\$23.34	\$23.69
Parks and Recreation	\$199.88	\$202.88	\$205.92	\$209.01	\$212.15
Streets and Street Lighting	\$53.01	\$53.81	\$54.61	\$55.43	\$56.26

Each residence has been attributed 1 Equivalent Benefit Unit (EBU), so each rate expressed is what each residence will pay for benefit assessments.

(See Reverse Side for example Benefit Assessment Equations)

Storm Drainage Assessment

\$22.32 (16/17) per EBU per year (*\$1.86 per month*) x Apportioned EBU's = Total Annual Cost

Parks and Recreation Assessment

\$199.88 (16/17) per EBU per year (*\$16.66 per month*) x Apportioned EBU's = Total Annual Cost

Streets and Street Lighting Assessment

\$53.01 (16/17) per EBU per year (*\$4.42 per month*) x Apportioned EBU's = Total Annual Cost

10:47 AM

05/15/18

Accrual Basis

Scotia Community Services District
Profit & Loss by Benefit Assessment
 May 2017 through April 2018

	40 Streets & Street Lighting	50 Storm Drainage	60 Parks & Recreation	TOTAL
Ordinary Income/Expense				
Income				
Revenue				
40280 · Benefit Assessment	143,100.62	33,098.04	307,214.00	483,412.66
40300 · Heisler Museum	0.00	0.00	56,240.00	56,240.00
40900 · Miscellaneous	2,273.92	0.00	0.00	2,273.92
Total Revenue	145,374.54	33,098.04	363,454.00	541,926.58
40500 · Sales Allowance				
40501 · Sales Allowance - Scotia CSD	-5,810.40	-430.35	-7,303.68	-13,544.43
Total 40500 · Sales Allowance	-5,810.40	-430.35	-7,303.68	-13,544.43
Total Income	139,564.14	32,667.69	356,150.32	528,382.15
Gross Profit	139,564.14	32,667.69	356,150.32	528,382.15
Expense				
Materials & Services				
50410 · Gen. Supplies, Lab, P&M	0.00	0.00	1,011.49	1,011.49
50420 · Utilities Communications	305.49	0.00	0.00	305.49
50430 · General Maintenance & Repairs	733.12	23.62	3,377.76	4,134.50
50440 · Insurance, Bonds	4,303.50	552.61	865.59	5,721.70
50450 · Electrical	11,741.35	0.00	482.65	12,224.00
50470 · Office Supplies	0.00	0.00	16.65	16.65
Total Materials & Services	17,083.46	576.23	5,754.14	23,413.83
Personnel and Professional Svcs				
60340 · Engineering	0.00	694.31	2,475.81	3,170.12
60350 · Admin/Operations/Maint Staff	464.00	290.00	4,855.72	5,609.72
Total Personnel and Professional Svcs	464.00	984.31	7,331.53	8,779.84
Total Expense	17,547.46	1,560.54	13,085.67	32,193.67
Net Ordinary Income	122,016.68	31,107.15	343,064.65	496,188.48
Net Income	122,016.68	31,107.15	343,064.65	496,188.48

Scotia Community Services District Staff Report

DATE: May 11, 2018
TO: Scotia Community Services District Board of Directors
FROM: Steve Tyler, Assistant General Manager
SUBJECT: RFP for Legal Services Agreement, FY 2018/2019

RECOMMENDATION:

The Administrative staff recommends that the SCSD Board consider authorizing the Request For Proposals (RFP) for Legal Services Agreement, fiscal year 2018/2019.

ACTION:

Motion to approve RFP for Legal Services FY 2018/2019

DISCUSSION:

Upon advice of present legal counsel and the request of the President of the Board, the district staff has prepared a Request For Proposals (RFP) for legal services for the 2018/2019 fiscal year. An RFP is the most common procurement tactic for a business or public agency to acquire services through a robust bidding process to determine the best candidate. The proposed RFP for Legal Services Agreement seeks to procure the most effective and budget-friendly legal services for the District. The RFP outlines the minimum qualifications for the applying firm, the requirements of the proposal, the background and future needs of the District, the submission and selection process, and requests for any potential conflicts of interests. It is important for the District to periodically evaluate potential changes in District personnel. An RFP is an appropriate method to consider alternatives and ensure the best services available for the District.

FISCAL IMPACT:

See fiscal budget FY 2018/2019 and the legal services budget amount.

**REQUEST FOR PROPOSALS FOR
General Counsel Legal Services**

RFP Issued:

RFP Submission Deadline:

Issued by
Scotia Community Services District
P.O. Box 104
Scotia, CA 95565
(707) 506-3030
scotiacsd.com

SECTION 1 – INTRODUCTION

Scotia Community Services District (“SCSD or District”) invites interested law firms with a minimum of Five (5) years’ experience representing public agencies in general governmental procedures, compliance, contracts and transactions, and civil litigation to submit proposals to provide general counsel legal services for the District. These services will include managing and determining the need to engage special counsel services.

A firm selected as General Counsel will serve at the pleasure of the Board of Directors of the District. If the District determines to award a contract for general counsel legal services because of the RFP, it will enter into a three-year contract establishing the terms and compensation for the subject services.

SECTION 2 – BACKGROUND INFORMATION

SCSD is a California special district formed in 2014 in accordance with California law. The District provides, reliable and affordable domestic drinking water, wastewater treatment, streets and street lighting, storm drainage and parks and recreation services for the residents and business within the community of Scotia. SCSD is governed by a five (5) member Board of Directors, the members of which are elected to four-year terms by the landowners in the District. The Board holds its meetings every third Thursday of the month. Additional information about the District may be found on its website, scotiacsd.com.

SECTION 3 – MINIMUM FIRM QUALIFICATIONS

1. All attorneys performing services for the District on behalf of the firm must be admitted to practice in the State of California and be members in good standing with the State Bar of California.
2. The firm member with primary responsibility for the services provided to the District, must have at least five (5) years’ experience providing general counsel legal services for special districts, municipalities or other local public agencies.
3. Demonstrated legal expertise (including counseling and litigation) in the following practice areas as they relate to special districts and municipal governments in California:
 - a. Laws and regulations governing California special districts and municipalities and governance of public entities, e.g. the Ralph M. Brown Act; Public Records Act; Political Reform Act; conflicts of interest laws; general public entity, community services district law and municipal law; the California Government Code; and operating procedures relative to the conduct of special districts and municipalities.
 - b. Water rights and wastewater matters in state courts and before the State Water Resources Control Board.

- c. Environmental law, including: California Environmental Quality Act (CEQA); federal National Environmental Policy Act (NEPA); California and federal Endangered Species Acts; federal Clean Water Act and the California Porter-Cologne Water Quality Act.
 - d. Experience and expertise in permitting from or otherwise working through regulatory issues with state and federal agencies such as the United States Bureau of Reclamation; United State Fish & Wildlife Service; United States Environmental Protection Agency; United States Army Corps of Engineers; California Department of Water Resources; State Water Resources Control Board; California Department of Fish & Wildlife; and North Coast Regional Water Quality Control Board.
 - e. Public employment labor laws, policies and litigation.
 - f. Preparation, review and adoption of legal opinions, contracts, memoranda of understanding (including risk transfer and avoidance provisions), resolutions, and policies.
 - g. Governance of special districts, especially community services districts, and municipalities, including amendments and bylaws.
 - h. California statutory provisions which may be applicable to the public works procurement, bidding, award and construction process, including the California Public Contract Code and Labor Code.
 - i. Real estate law, easements, rights-of-way, encroachment permits, and other related agreements and negotiations.
 - j. Legislative and administrative (regulatory) law, both California and federal, including proposed and enacted legislation.
 - k. Other relevant areas pertaining to special district, community services district and municipal law, including liability claims, legal compliance, ethics, and risk avoidance.
 - l. Supervision of special counsel in litigation matters.
4. Legal Counsel shall attend Board of Directors meetings, as determined by the District Board President or the District General Manager and the firm must be accessible to provide legal assistance to the District on an emergency basis.

SECTION 4 – PROPOSAL REQUIREMENTS

All Proposals must include and will be evaluated based on the following criteria:

1. A detailed scope of services that reflects the firm's understanding of the District's requirements.
2. Written responses to all the subject areas set forth in the "Minimum Firm Qualifications" section, demonstrating the firm's experience and expertise in: (a) counseling; (b) transactional; and (c) litigation matters for each subject area.

3. Personnel Qualifications: The Proposal shall identify the Legal Counsel who will be primarily responsible for providing legal services to the District, and any other attorneys and staff to be assigned to the District legal matters. Please include the qualifications, training, and certifications for all attorneys and staff who will perform the services outlined herein.
4. List of Clients: A list of public agency clients represented by the firm during the last five (5) years, with contact information (i.e., name of the clients, addresses, phone numbers, and contact person). The District reserves the right to contact any of the references.
5. Additional Firm Information: The Proposal shall include the following: (a) Its scope of practice (regional, statewide, or local), and founding date; (b) Number of firm partners, “of counsel,” associates, (c) Location of primary office.
6. Questions: Please respond in the Proposal to the following questions:
 - a. If the Firm were selected to represent SCSD, do you anticipate that it would have to obtain conflict waivers from any currently existing firm client?
 - b. Are you aware of any other ethical conflicts or other related issues which would preclude the firm from providing legal services to?
 - c. Do your designated litigation attorneys try cases by themselves or is responsibility shared with transactional attorneys who specialize in the area at issue?
 - d. Briefly describe your firm’s experience and expertise in advising public agencies on questions of law involving: (a) the Brown Act; and (b) conflict of interest laws.
 - e. A description of legal services performed for public agencies located in the Humboldt County area
7. Fee Schedule: Please answer the following:
 - a. Please state the hourly rate(s), together with costs reimbursement(s), you propose for rendering legal services to the District, including rates for all attorneys and staff.
 - b. Does the firm offer discounted rates to public agencies?
8. Sample Contract: Provide a sample contract that the Firm proposes to use for this engagement with the insurance requirements listed herein.

SECTION 5 – TERMS AND CONDITIONS

1. Acknowledgement of SCSD Contract Provisions. Interested firms should review and acknowledge in the Proposal that the following provisions will be included in the proposed contract:

The Firm shall procure and maintain the insurance required, for the duration of the contract, to insure against claims for injuries to persons or damages to property arising from or in connection with the performance of legal services performed.

2. Insurance Requirements:

- a. Commercial General Liability: Coverage should include \$1,000,000 per occurrence, \$2,000,000 aggregate, as applicable. Prior to the start of work, the selected firm shall provide to the District evidence of insurance from an insurer(s) certifying the coverage. The District and its Directors, officers, employees, contract employees, agents and volunteers are added as insureds. Additional insured endorsements shall be provided on Commercial General Liability form ISO 20 10 11 85 (or form ISO 20 10 10 01 accompanied by form ISO 20 3710 01).
- b. Business Automobile Liability: Business Automobile Liability insurance insuring all owned, non-owned and hired automobiles - coverage code 1 "any auto" (Insurance Service Office policy form CA 0001 or insurer's equivalent) in the amount of \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c. Workers' Compensation and Employer's Liability Insurance: Shall be furnished in accordance with statutory requirements of the State of California.
- d. Professional Liability Insurance: For the full term of the contract, the firm shall procure and maintain errors and omissions liability insurance appropriate to the legal profession. Such coverage shall have minimum limits of no less than one million dollars (\$1,000,000.00) per claim.
- e. Commercial General Liability and Workers' Compensation and Employer's Liability Insurance: Policies shall contain a waiver of transfer of rights of recovery ("waiver of subrogation") against the District, its Directors, officers, employees, contract employees, agents and volunteers for any claims arising out of the work of the firm.
- f. Additional Insured Requirements: The CGL Coverage and the Automobile Liability Insurance shall contain an endorsement naming the District, its Directors, officers, employees, contract employees, agents and volunteers as additional insureds.

SECTION 6 – REQUESTS FOR CLARIFICATION

A firm requesting clarification pertaining to this RFP shall submit all requests to:

Scotia Community Services District
Leslie Marshall, General Manager
P.O. Box 104
Scotia CA 95565
infoscotiacsd@gmail.com

SECTION 7 – SUBMISSION OF PROPOSALS

To be considered, an original and seven (7) copies of the Proposal must be received by SCSD no

later than 5:00 p.m. on June 12, 2018. Facsimile and email submissions will not be accepted.

The following information shall be included within the Proposal:

1. Title Page and Table of Contents.
2. Letter of Introduction signed by a partner of the firm and a summary highlighting the key points of the Proposal.
3. Detailed Proposal.
4. Signed Acknowledgement Form - refer to Exhibit "A" attached hereto.
5. Signed Conflict of Interest Form - refer to Exhibit "B" attached hereto. Please submit your Proposal to:

Scotia Community Services District
Leslie Marshall, General Manager
P.O. Box 104
Scotia CA 95565

SECTION 8 – SELECTION PROCESS AND EVALUATION CRITERIA

Proposals will be examined for compliance with all the requirements in this RFP. SCSD, in its discretion, may waive any omission which it deems to be non-essential or inconsequential.

SCSD Directors and staff will evaluate each proposal submitted for completeness, including all of the information requested in this RFP. Proposing firms should note that its fee proposal and pricing, while important, will not be the only deciding factor in final selection, but rather the ability of the firm to provide and perform the required duties on behalf of the District as outlined herein.

Oral presentations and written questions for further clarifications may be required of some or all firms. Final selection will be based on evaluation of the Proposal and interview. The Proposals will be initially screened by the District Administrative Staff and an invitation to interview with the District's Board of Directors will be extended to selected firms.

SCSD reserves the right to modify the process.

Firms shall bear the cost of any interviews or meetings with the District Board of Directors.

SECTION 9 – PUBLIC RECORDS ACT

All Proposals submitted in response to this RFP will become the property of the District upon submission and a matter of public record pursuant to applicable law. The District reserves the right to make copies of all Proposals available for inspection and copying by interested members of the public as records of the District and District shall be under no obligation to the firm to withhold such records.

The District is subject to the Public Records Act under California Government Code section 6250 et. seq. As such, all required submitted information is subject to disclosure to the general public. Firms are further advised that all the terms and conditions, including fees and fee structures, forming part of any agreement entered into shall, upon such agreement being executed, become a public record of the District and subject to full disclosure, and each firm submitting a Proposal waives any right to object to any such disclosure.

SECTION 10 – PROPOSAL ACCURACY

A Proposal which is incomplete, irregular, or conditional may be rejected. By submitting a Proposal, the submitting firm agrees that any significant inaccuracy in information given by the firm to the District will constitute good and sufficient cause for rejection of the Proposal.

SECTION 11 – DISCLAIMER

The SCSD reserves the right:

1. To enter into agreements for legal services at any time (for general counsel or special counsel legal services) with persons or firms who do not respond to this RFP;
2. To waive any irregularities, and to accept or reject any or all Proposals regardless of qualifications either in whole or part with or without cause;
3. To withdraw this solicitation at any time without prior notice;
4. To negotiate a final contract with any respondents as necessary to serve the best interest of SCSD; and
5. To amend this RFP.

The SCSD does not make any representations that any contract will be awarded to any firm responding to this RFP.

SECTION 12 – CONFLICTS OF INTEREST

SCSD is subject to the Political Reform Act and to conflicts of interest provisions under California Government Code section 1090, et seq. To protect the District, all potential

contracting parties with the District shall be required to complete a Conflict of Interest Questionnaire prior to the award, if any, of a contract. Refer to Exhibit “B” attached hereto.

SECTION 13 – DISCRIMINATION

The firm and all subcontractors must not discriminate, nor permit discrimination, against any person on the grounds of race, national origin, sex, handicap, sexual orientation, veteran status, or any other protected class in their employment practices, in any of their contractual arrangements, in all services and accommodations they offer the public or in their business operations.

EXHIBIT "A" ACKNOWLEDGMENT FORM

Request for Proposals for General Counsel Legal Services

PART A

The proposing firm warrants the following:

1. That it will not delegate or subcontract its responsibilities under contract without the express, prior written permission from Scotia Community Services District.
2. That all information provided in connection with this Proposal is true and correct.
3. That it will acknowledge and agree with all terms and conditions stated in this Request for Proposal.

Firm Name (Respondent to RFP): _____

Address: _____ City: _____ State: _____ Zip: _____

Contact Name: _____ Title: _____

Telephone No: _____ Email: _____

Signature _____

PART B

The above listed firm is responding to a Request for Proposals for a qualified and experienced firm to provide general legal counsel services.

THIS COMPLETED FORM MUST BE INCLUDED WITHIN THE PROPOSAL SUBMITTED TO THE SCOTIA COMMUNITY SERVICES DISTRICT BY THE RESPONDING FIRM.

SUBMIT PRIOR TO 5:00 P.M. June 12, 2018.

Scotia Community Services District

Leslie Marshall, General Manager

P.O. Box 104

Scotia CA 95565

EXHIBIT “B” CONFLICT OF INTEREST FORM

Request for Proposals for General Counsel Legal Services

Scotia Community Services District and California state law prohibit its Directors and staff from making decision in which they may have certain financial or personal relationships with a contracting party. The questions that follow are intended to alert SCSD -to potential code of conduct conflicts. If conflicts of only a remote interest exist, a contract may nonetheless be awarded as disclosure allows SCSD to choose processes for negotiation, award, and administration of contracts to avoid such conflicts. However, SCSD reserves the right to review and make a final determination regarding whether any actual or potential conflicts would violate SCSD policies or California law and thus preclude a contracting party’s participation in this award. All contracting parties and proposed sub-consultants must respond to each of the following questions. For responses answered “yes,” may require additional information to evaluate potential conflicts prior to award. Failure to fully disclose conflicts will result in rejection of the proposal or immediate termination of any contract awarded therefrom.

1. To the best of your knowledge, do any current SCSD Directors or employees have any of the following financial relationships with your Firm or with proposed sub-consultants?

Owner	[Yes] [No]
Member	[Yes] [No]
Partner	[Yes] [No]
Officer	[Yes] [No]
Employee	[Yes] [No]
Contractor; Consultant	[Yes] [No]
Broker	[Yes] [No]
Major Stockholder	[Yes] [No]

(Major stockholder means ownership of 3% or more of firm stock.)

If “Yes” to any of the above, did this Board member or employee participate in formulating your submittal?

[Yes] [No]

2. Are you or, to the best of your knowledge, are any officers or key employees of your firm or proposed sub-consultants an immediate family member of any current SCSD Director or employee? [Yes] [No]
3. To the best of your knowledge, is a SCSD Director or employee seeking or being considered for employment by your firm or by proposed sub-consultants? [Yes] [No]
4. To the best of your knowledge, have you or any officers or key employees of your firm or any proposed sub-consultants provided contributions directly or indirectly to a SCSD

Director while this potential new contract is pending before SCSD?

[Yes] [No]

5. To the best of your knowledge, have you or any officers or key employees of your firm or any proposed sub-consultants ever served on' SCSD Board?

[Yes] [No]

6. Have any of your current employees been employed by SCSD in the past five (5) years?

[Yes] [No]

7. On a separate sheet, identify and disclose any business relationship(s), direct or indirect, past, present, or pending, with any associated entity in the SCSD service area, or any such entity which has engaged in past or present litigation against SCSD. In particular, please list any business relationships with Humboldt Redwood Company (HRC), Town of Scotia, LLC (TOS), California Regional Water Quality Control Board (RWQCB) and/or the County of Humboldt.

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

Name (type or print)

Signature

Title

Date

Firm Name

THIS COMPLETED FORM MUST INCLUDED WITHIN THE PROPOSAL SUBMITTED TO SCOTIA COMMUNITY SERVICES DISTRICT BY THE RESPONDING FIRM SUBMIT PRIOR TO 5:00 P.M. June 12, 2018.

Scotia Community Services District

Leslie Marshall

P.O. Box 104


Scotia CA 95565



**California Special
Districts Association**
Districts Stronger Together

Brown Act Compliance Manual

for Special Districts

A large, silver, mesh-covered microphone is positioned in the lower-left foreground, angled towards the center. The background is a blurred indoor setting with many people, suggesting a public meeting or a large gathering. Warm, out-of-focus lights are visible at the top of the frame.

The Ralph M. Brown Act ("Brown Act") was enacted in 1953 in response to series of articles in the San Francisco Chronicle detailing the way local agencies at the time conducted secret meetings or caucuses even though state law had long required that local agencies conduct business publically. The purpose behind the Brown Act, as originally adopted and as it remains today, is to ensure that actions of local public agencies – including their deliberations - are taken in open and public meetings, with posted agendas, and where all persons are permitted to attend and participate.

This manual provides special districts with guidelines and tips for complying with the various meeting agenda, notice, public participation, and public reporting requirements of the Brown Act. Districts are permitted to and should consider adopting local policies that exceed the minimum requirements of the Brown Act in terms of providing greater public access and openness to district business.

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions betaken openly and that their deliberations be conducted openly."³

Table of Contents

Overview of the Brown Act	page 4
District Bodies and Groups Covered and Not Covered by the Brown Act	page 6
Meetings Covered and Exempted	page 8
Categories of Meetings, and Applicable Notice, Location, Agenda and Procedural Requirements	page 11
Rights of the Public at Meetings	page 15
Closed Sessions	page 18
Adjournments and Continuances	page 25
Remedies and Penalties for Violations	page 26

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 *Printed on recycled paper.*





Overview of the Brown Act

The Ralph M. Brown Act ("Brown Act")¹ was enacted in 1953 in response to series of articles in the *San Francisco Chronicle* detailing the way local agencies at the time conducted secret meetings or caucuses even though state law had long required that local agencies conduct business publically. The purpose behind the Brown Act, as originally adopted and as it remains today, is to ensure that actions of local public agencies – including their deliberations - are taken in open and public meetings, with posted agendas, and where all persons are permitted to attend and participate. Courts construe the Brown Act liberally, in favor of openness and narrowly construe its limited exemptions.

The Brown Act and provisions of the Americans with Disabilities Act not only guarantee the public's right to attend and participate in open and public meetings, but ensure that the meetings will actually be accessible to all members of the public. Violations of the Brown Act can result in the action taken being invalidated and the award of attorney's fees and costs if there is a successful legal action against a public agency. Certain intentional violations can result in criminal prosecution. And regardless of the nature of the violation, the mere fact that the public perceives that an agency is improperly conducting business behind closed doors can indelibly damage the public's trust in local government.

This manual provides special districts² with guidelines and tips for complying with the various meeting agenda, notice, public participation, and public reporting requirements of the Brown Act. Districts are permitted to and should consider adopting local policies that exceed the minimum requirements of the Brown Act in terms of providing greater public access and openness to district business.

This manual is not intended, however, to provide legal advice on any specific issue. Also, because the statutory and case law summarized in this manual is subject to change, district staff and officials should always seek the advice of agency legal counsel as to the application of the Brown Act in a particular situation and to ascertain whether there have been recent changes to the Brown Act or its interpretation by the courts.

The purpose behind the Brown Act, as originally adopted and as it remains today, is to ensure that actions of local public agencies – including their deliberations - are taken in open and public meetings, with posted agendas, and where all persons are permitted to attend and participate.



This manual is not intended, however, to provide legal advice on any specific issue.

PURPOSE AND BASIC RULE

The purpose of the Brown Act is elegantly stated in the opening declaration:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. ***It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.***³

Similarly, the Brown Act's basic and unchanged rule provides:

"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."⁴

As summarized by one court: "It is clearly the policy of this state that the proceedings of public agencies, and the conduct of the people's business, [must] take place at open meetings, and that the deliberative process by which decisions related to the public's business are made [must] be conducted in full view of the public."⁵ Thus, except for certain closed session items, all aspects of the decision-making process by legislative bodies—including the acquisition of information, discussion and debate—must be conducted in public.





District Bodies and Groups Covered and Not Covered by the Brown Act

The Brown Act only applies to a district “legislative body” as defined in Section 54952. Therefore, understanding the scope of that term is the critical first step in determining whether the Brown Act applies to a particular district body or group.

What bodies are considered a “legislative body” subject to the Brown Act?


1. **The Governing body** of a district (i.e., the board of directors) is considered a “legislative body” subject to the Brown Act.⁶

Note: The Brown Act also applies to persons elected to serve on a legislative body covered by the Brown Act but who have not yet assumed the duties of office.⁷

2. **Standing committees** of a legislative body, regardless of their composition (i.e., including less than a quorum of the legislative body), that have either (a) continuing subject matter jurisdiction or (b) a meeting schedule fixed by formal action of a legislative body are subject to the Brown Act.⁸

3. **Appointed bodies**, whether permanent or temporary, decision-making or advisory, created by a formal act of the governing body are subject to the Brown Act.⁹ The “formal act” required to create a Brown Act legislative body includes any official action and is not necessarily limited to formation by a formal vote or adoption of a resolution.¹⁰

4. **Joint Powers Authority** legislative bodies of a legally separate entity established by districts under the Joint Exercise of Powers Act must comply with the Brown Act.¹¹



5. **Private organizations.** The board or other governing body of a private organization, such as a nonprofit corporation, is subject to the Brown Act, if: (a) a district legislative body created or was involved in bringing the organization into existence to exercise lawfully delegated authority, or (b) if both of the following requirements are met: (i) the organization receives funds from the district and (ii) a member has been appointed as a full voting member of such board by the district's legislative body.^{12, 13}

What district bodies or groups are not considered a “legislative body” subject to the Brown Act?

1. **A temporary advisory committee** (often referred to as an **ad hoc committee**) composed solely of less than a quorum of the legislative body that is created for a single or limited purpose (e.g., a recruitment committee for a vacant position or a committee to investigate a particular incident or issue) that will dissolve once its task is completed is not subject to the Brown Act.

2. **Groups advisory to a single member of a legislative body** created by the informal action of the particular member to advise the member are not covered by the Brown Act.¹⁴

3. **A group appointed by district staff** (e.g., a committee to assist with a district social or community event) is not subject to the Brown Act.



Compliance Tip

Forming a true ad hoc advisory committee that is composed solely of less than a quorum of the legislative body and that is not subject to the Brown Act requires careful consideration of these restrictions.



The Brown Act only applies to “meetings” of district legislative bodies.

Meetings Covered and Exempted

The Brown Act only applies to “meetings” of district legislative bodies. Thus, it is critical to understand what meetings are covered and what gatherings are not considered a meeting.

Definition of meeting.

The Brown Act defines a *“meeting” as any congregation of a majority of the members of a legislative body at the same time and location, including a teleconference location, to hear, discuss, deliberate, or take action on any item that is within the legislative body’s subject matter jurisdiction.*¹⁵ As defined, the term “meeting” is not limited to gatherings at which action is taken but applies equally to situations where a quorum of the legislative body merely hears, discusses, or deliberates on district business. These terms have their ordinary meaning, but there is a specific definition for “action taken,” which includes: (1) a collective decision by a majority of the members of a legislative body; (2) a collective commitment, or promise by a majority of the members to make a positive or negative decision; or (3) an actual vote by a majority of the members of the legislative body sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.¹⁶

Prohibition against serial meetings.

Outside of a properly noticed and conducted Brown Act meeting, a majority of the members of a legislative body may not use a series of communication of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item that is within the body’s subject matter jurisdiction.¹⁷

This type of prohibited “serial meeting” can occur in two ways:

- (1) **Chain:** If member A contacts member B, and B contacts member C, and C contacts member D, and so on, until a quorum of the legislative body has been involved.
- (2) **Hub-and-spoke:** An intermediary, such as the general manager, contacts at least a quorum of the members of the legislative body to develop a collective concurrence (or communicate each member’s respective positions) on an action to be taken by the legislative body.



Compliance Tip

The use of e-mail can easily result in a serial meeting along with a paper trail establishing a potential violation of the Brown Act.¹⁸ District legislative body members must be extremely careful with the use of e-mail, except to pass along general information. For example, members should refrain in e-mails from stating or taking a position on matters that may come before the district. Members should also refrain from giving instructions or directions to staff members unless they have clear authority to do so. One never knows where or in how many “in” boxes an e-mail may end up. This tip is equally applicable to members posting comments on social media and other technological platforms.

Meetings Covered and Exempted (continued)

Technological Conferencing.

Meetings may be conducted by teleconferencing (i.e., any electronic audio or video connection) under the following conditions:¹⁹

- (1) the agenda specifies all teleconference locations and is posted at each teleconference location;
- (2) public access is provided at each teleconference location;
- (3) public opportunity to speak is provided at each teleconference location; and
- (4) all votes are taken by roll call.

At least a quorum of the members of the legislative body must participate in the teleconference within the boundaries of the district.

Note: The use of teleconferencing is a meeting option available to the legislative body and the statute appears to require a concurrence of the majority of the body for its use ["If the legislative body elects to use teleconferencing..."].²⁰ The Brown Act does not create a right for the public to participate in meetings via teleconferencing unless members of the legislative body are present at such location, though the legislative body may in its discretion provide the public with additional locations.²¹



Compliance Tip

Districts should consider adopting a policy on the use of teleconferencing that addresses the circumstances under which it may be appropriate to use this technology, how much advance notice must be given, and the permissible additional costs, if any, that may be incurred.

What is not a meeting?

The Brown Act lists seven circumstances that are not considered a regulated "meeting." The first, individual contacts, is rather obvious, while the others are express exceptions to the general quorum meeting rule.

1. **Individual Contacts.** Individual district legislative body members may engage in separate conversations or communications with staff, the public, and even another member of a legislative body, provided that the official or the person they contact *"does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."*²² In other words, the Brown Act does not restrain a member of a legislative body's individual actions, but such contacts cannot lead to the type of prohibited serial meeting described above.

Quorum Exceptions.

Attendance by a quorum of members of a legislative body is permitted in the following circumstances, provided that a majority of the members do not discuss district business amongst themselves (other than as part of the scheduled meeting, occasion or program):²³

2. **Standing Committee Meetings.** Members may attend an open and noticed meeting of a standing committee of the legislative body (provided that the members of the body who are not members of the committee attend only as observers).
3. **Meetings of another district legislative body** that are open and publicized.
4. **Meetings of a legislative body of another local agency** that are open and publicized (e.g., county board of supervisors, city council, or the board of directors of another district).
5. **Community meetings** organized to address topics of local community concern by a person or organization other than the district, provide the meeting is open and publicized.

Note: The Brown Act does not define what “publicized” means for the purposes of the community meeting exemption, but notice in a newspaper, a mass mailing, physical posting in multiple locations around a community, or posting on Internet Web sites should be sufficient to satisfy the Brown Act’s openness requirements.

6. **Conferences or similar gatherings** that are open to the public and are for purposes of discussing issues of general interest to the public or to public agencies such as the district.
7. **Social or ceremonial events** such as parties, weddings, funerals, retirement celebrations or charitable fundraisers.



Practice Tip

Public officials do not have to stop engaging with the public because of the Brown Act. But they should take some simple precautions to avoid unintentional violations of the law. This includes warning members of the public that you cannot discuss the views of other officials and stopping any such discussion by a member of the public as soon as possible.

Categories of Meetings, and Applicable Notice, Location, Agenda and Procedural Requirements

Categories of meetings subject to the Brown Act.

1. **Regular meetings** are meetings held at the dates, times and location set by ordinance, resolution, bylaws or other formal action of a legislative body.²⁴
2. **Special meetings** are meetings called by the presiding officer or a majority of the legislative body and may be held at any time subject to a 24-hour notice requirement. Such written notice must be delivered to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and to each radio and television station that has requested such notice in writing. Only the business set forth in the notice may be considered at the meeting.²⁵
3. **Adjourned meetings** are regular or special meetings that have been adjourned to a time and place specified in the order of adjournment.²⁶
4. **Emergency meetings** are meetings that may occur where the legislative body determines there is an emergency situation that severely impairs public health or safety or there is an existing or threatened situation that poses immediate and significant peril. The special meeting provisions apply to emergency meetings, except the 24-hour notice is not required. News media must be notified by telephone at least one hour in advance of an emergency meeting (except for "dire" emergencies), and all telephone numbers provided must be tried. If telephones are not working, the notice requirements are deemed waived, but the news media must be notified as soon as possible of the meeting and any action taken. Closed sessions are permitted during an emergency meeting under Section 54957 if agreed to by 2/3 vote of the members present (or all of the members if less than 2/3 present). The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the emergency meeting as possible.²⁷

Categories of Meetings (continued)

Permitted locations for meetings.

1. **Regular and special meetings** must be held *within the boundaries* of the agency's jurisdiction except when:
 - complying with federal or state law or court order;
 - inspecting real property or personal property that cannot be conveniently brought to the agency;
 - participating in multi-agency meetings (provided the meeting takes place in a member agency's jurisdiction and is properly noticed);
 - meeting in the closest meeting facility if the district has no meeting facility within its boundaries;
 - meeting with elected or appointed federal or state officials when a local meeting would be impractical (solely to discuss local issues over which such officials have jurisdiction);
 - meeting in or nearby a facility owned by the agency (provided the meeting is limited to items directly related to the facility); and
 - visiting the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal costs.²⁸

Note: Retreats and workshops for agencies other than statewide JPAs must be held within the territory of the agency.

2. **Joint powers agencies** may meet within the territory of any member, or if members are located throughout the state, then they can meet anywhere in the state, provided such facility is open to all members of the public.²⁹

3. **Emergency meetings** are subject to the same locational rules as regular and special meetings except that the presiding officer may move them to another location if it is unsafe to meet in the regular designated meeting location.³⁰

Closed sessions are permitted during an emergency meeting under Section 54957 if agreed to by 2/3 vote of the members present (or all of the members if less than 2/3 present). The minutes of the meeting, a list of the persons notified or attempted to be notified, a copy of any roll call vote, and any action taken at the meeting must be posted in a public place for a minimum of ten days as soon after the emergency meeting as possible.

Categories of Meetings (continued)

Agenda requirements.

General Rules:

- A written agenda must be prepared for each regular or adjourned regular meeting of the legislative body.
- The agenda must be posted at least 72 hours in advance of the regular meeting to which it relates.
- Each item of business to be transacted or discussed, including items to be discussed in closed session, must be the subject of a brief general description, which generally need not exceed 20 words.³¹
- If the agency has an Internet Web site, agendas must be posted at least 72 hours before a regular meeting and at least 24 hours before a special meeting on the agency's Web site. The special meeting Internet posting requirement only applies to an agenda of either (a) the governing body, or (b) the participating members are compensated, and one or more members attending are also members of the governing body.³²



Compliance Tip

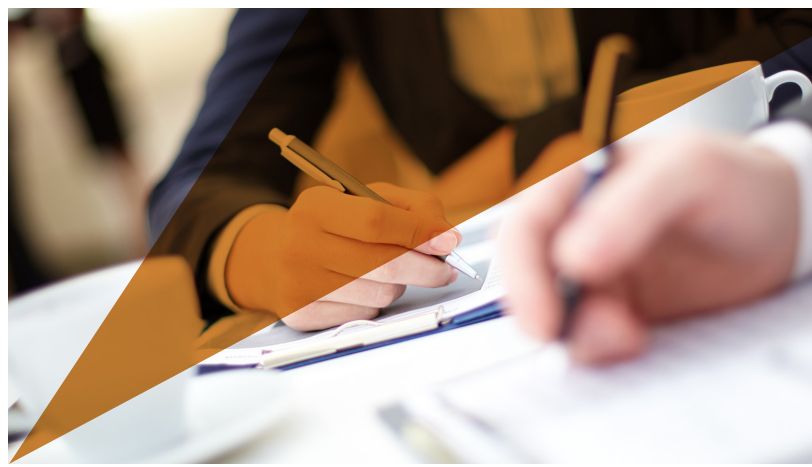
Drafting an agenda description that is brief but discloses enough information for the public to understand a proposed action is not as easy task. Including information such as the location of a project, the purpose of a project (as opposed to just an agency or applicant given name), the parties involved, and the costs associated with the action will help deflect claims of lack of proper notice.

Notes: Agendas at physical locations must be posted in areas that are freely accessible to the public at all times. Posting on a bulletin board inside the district's office that is locked after business hours is not in compliance. The Internet Web site posting requirement may be excused if there are technical difficulties, provided that the district continues to comply with all other notice requirements.³³ The Internet Web site posting requirement has also been amended so that effective January 1, 2019, the agenda must be posted as a direct link on the homepage of the agency's Web site and in an open format that permits the public to retrieve, download, index, and search for the agenda through the Internet, in a manner that is "platform independent and machine readable."³⁴

Non-Agenda Items.

Action or discussion on any item not appearing on the posted agenda is generally prohibited except that members of the legislative body may:³⁵

- briefly respond to statements made or questions posed by the public;
- ask a question for clarification;
- make a brief announcement;
- make a brief report on activities;



- provide a reference to staff or other sources for factual information;
- request staff to report back to the legislative body at a subsequent meeting; or
- direct staff to place a matter of business on a future agenda.³⁶

Statutory exceptions to action on non-agenda items.

A legislative body may take action on items of business not appearing on the agenda under the following conditions:

- **Emergency:** When a majority decides that an *emergency situation* exists (i.e., work stoppage, crippling disaster, etc.).
- **Subsequent need urgency item:** When 2/3 present (or all members if less than 2/3 are present) determine there is a need to take immediate action and that *the need for action came to the attention of the district subsequent to the agenda being posted*.
- **Hold over item:** When the item appeared on the agenda of, and was continued from, a regular meeting held not more than five days earlier.³⁷

Special agenda disclosure for concurrent meetings.

A legislative body that convenes a meeting and whose membership constitutes a quorum of another legislative body may convene a meeting of the other legislative body, either simultaneously or in serial order, only if a clerk or member of the body verbally announces, prior to convening any simultaneous or serial meeting, the amount of “compensation” or “stipend” that each member will receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body. No agenda announcement is required if:

- (1) The amount of compensation is prescribed by statute; and
- (2) No additional compensation for the simultaneous or subsequent meeting has been authorized by the district.

The terms “compensation” and “stipend” do not include reimbursement for actual and necessary expenses incurred by a member in the performance of official duties, including travel, meals, and lodging.³⁸



Rights of the Public at Meetings

Public attendance.

The Brown Act's mandate that all persons must be "permitted to attend any meeting of a legislative body"³⁹ is implemented in a variety of ways:

- Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise fulfill any condition precedent to attending. If an attendance list, register, questionnaire or similar document is circulated to persons present during the meeting, it must state that the signing, registering or completion of the document is voluntary.⁴⁰
- No meeting or any other function can be held in a facility that prohibits attendance based on race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to the disabled.⁴¹
- No meeting may be held where the public must pay or make a purchase to attend (this includes remote locations where teleconferencing is used).⁴²
- And if teleconferencing is used, members of the public must be given notice of the teleconference location and be able to address the legislative body from such location.⁴³

Public accommodation (Americans With Disabilities Act).

All open meetings under the Brown Act must also comply with Section 202 of the Americans with Disabilities Act ("ADA") and its implementing rules and regulations.⁴⁴ The ADA prohibits a governmental entity from discriminating against individuals with disabilities in the programs, services, and activities it offers.⁴⁵ Programs and activities are required to be readily accessible to and usable by disabled individuals.⁴⁶ Therefore, public entities must make accommodations for disabled individuals to participate in the meetings unless doing so would be an undue burden or cause a fundamental alteration in the program or activity.⁴⁷ This is accomplished in the following two ways.

1. **Physical facilities:** In addition to the meeting room being accessible, the telephones and bathrooms must also be made accessible if phones and bathrooms are provided for non-disabled individuals.⁴⁸ Meeting rooms must also have wheelchair seating and assistive listening systems.⁴⁹



2. **Agenda and written materials:** Agendas must include information regarding how, to whom and when a request for disability-related modification or accommodation may be made in order for a person with a disability to participate in the meeting. When requested by a person with a disability, the agenda and documents in the agenda packet must be made available in “appropriate alternative formats,” and writings distributed at a public meeting must also be made available in “appropriate alternative formats,” even when the materials are handed out by members of the public.⁵⁰

Public access to meeting records.

The public has the right to review agendas and documents and other writings distributed to a majority of the legislative body (except for privileged documents). A fee or deposit may be charged for a copy of these public records.⁵¹



Compliance Tip

The agenda must designate the address where such documents may be inspected by the public.⁵²

Documents and other writings related to a meeting must be made available to the public at the time of distribution to a majority of the legislative body meeting if prepared by the district or a member of a legislative body, or after the meeting if prepared by some other person.⁵³

If requested in writing in advance, a member of the public may be mailed copies of the agenda or agenda packet at the time it is distributed to a majority of the legislative body. Such a request is valid for the calendar year filed. A public agency may establish a mailing fee not to exceed the cost of providing this service.^{54,55}

Any audio or video tape record of a public meeting made by or at the direction of the district is subject to inspection under the Public Records Act and such inspection must be provided without charge on equipment made available by the district. If copies of the audio or video tape are desired, the agency may impose its ordinary charge for copies. Audio and video tapes may, however, be erased or destroyed 30 days after the taping or recording.⁵⁶



Compliance Tip

With the advent of digital files, most agencies maintain copies of meeting recordings on their Web site, either permanently or for an extended period of time, to ensure continued public access and as an aid for reminding officials and staff precisely what transpired in such meetings.



The legislative body may remove any person from a meeting who willfully interrupts the proceedings.

Rights of the Public at Meetings (continued)

Public participation.

A regular meeting agenda must allow an opportunity for members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body.⁵⁷

The public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.⁵⁸



Compliance Tip

If a closed session is held before the start of the regular open session agenda, the public must be provided an opportunity to address the legislative body on any closed session item before the legislative body adjourns to closed session.

The legislative body may adopt reasonable regulations, including time limits, on public comments (e.g., 3-5 minutes/speaker).⁵⁹ The public is allowed to use audio or video tape recorders or still or motion picture cameras at an open meeting, absent a reasonable finding by the legislative body that such recording, if continued, would persistently disrupt the proceedings due to noise, illumination, or obstruction of view.⁶⁰

Public conduct.

Disturbances. The legislative body may remove any person from a meeting who willfully interrupts the proceedings. Removal is only justified, however, when an audience member actually disrupts the meeting.⁶¹ If order still cannot be restored, the meeting room may be cleared.⁶² Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may also re-admit individuals not responsible for the disturbance.⁶³

Non-disruptive criticism. The legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.⁶⁴ Expressions of opposition to actions of the district (provided they are not overly disruptive) constitute protected speech.⁶⁵

Closed Sessions

The Brown Act recognizes that not all local agency business should be conducted in the open and provides limited exceptions termed “closed sessions” for sensitive matters such as litigation, security threats and certain personnel matters. If a matter is not listed in the Brown Act as an appropriate subject for a closed session, the matter must be discussed in public even if the subject is sensitive, embarrassing or controversial. In addition to the listing the permissible subjects for closed sessions, the Brown Act outlines how such matters should be agendized, and when and how the matters must be disclosed in an open meeting or otherwise made public.

Matters appropriate for closed session and applicable agenda description.⁶⁷

1. Public employment. A closed session may be held to appoint, employ, evaluate the performance of, discipline, or dismiss a public employee.⁶⁸ A closed session may also be used to hear specific complaints or charges brought against a public employee unless the employee requests a public session upon 24 hours’ advance written notice.⁶⁹ The applicable safe harbor agenda descriptions for these matters are:

PUBLIC EMPLOYMENT

Government Code section 54957

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Government Code section 54957

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

Government Code section 54957

(No description is required.)

Note: The public employment exception only applies to “public employees.” This includes independent contractors that function as an officer or employee such as a contract general counsel or human resources officer. Discussions or action taken on persons other than employees (e.g., elected officials, appointed members of a committee, and independent contractors that do not function as an officer or employee) must be taken in open session unless there is another applicable exception such as potential litigation.⁷⁰



Compliance Tip

Interviews for appointments to district legislative or advisory bodies must be conducted in open session. While candidates for such positions cannot be compelled to stay outside the room where the interview is held while other candidates are being interviewed, most will comply with a request to do so.



As noted below, a legislative body may address compensation of an unrepresented employee, such as a general manager, under the labor negotiation exception.

Closed Sessions (continued)

Note: The personnel exception does not authorize action on proposed compensation in closed session, except for a reduction in pay as a result of proposed disciplinary action. Reviewing an employee's job performance and making threshold decisions about whether any salary increase should be granted is permissible for closed session, but any action concerning the amount of any salary increase must be held in an open session.⁷¹ As noted below, a legislative body may address compensation of an unrepresented employee, such as a general manager, under the labor negotiation exception.

2. Labor negotiations. A closed session is appropriate to discuss, with the agency's bargaining representative, salaries, salary schedules, fringe benefits, funding priorities and other matters within the statutory scope of employee representation for both represented (e.g., union or other recognized employee organization) and unrepresented employees (e.g., management). Final action must be taken in open session.⁷² The applicable safe harbor agenda description is:

CONFERENCE WITH LABOR NEGOTIATORS

Government Code section 54957.6

Agency designated representatives: (Specify names of designated representatives attending the closed session)

Employee organization: (Specify name of organization representing employee or employees in question)

or

Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

Note: The Brown Act was recently amended to require an oral report in open session at the meeting where final action is to be taken that summarizes the recommendation for final action on the salary, salary schedule, or compensation paid in the form of fringe benefits of a "local agency executive" as that term is defined in Government Code section 3511.1 (e.g., management and department heads, including persons serving under an employment contract).⁷³ The intent appears to be to preclude placing such items on a consent calendar or similar action item that may involve no discussion of the matter.



3. **Litigation.** A closed session is appropriate to discuss (1) threatened litigation against the district; (2) potential exposure to litigation; (3) potential initiation of litigation; and (4) existing litigation.

Potential litigation against or to be initiated by the district. A closed session may be held in situations where there is anticipated litigation against the district or when the district is contemplating bringing a legal action. Where the agency seeks to discuss with its legal counsel threatened or anticipated litigation, there must be “existing facts and circumstances” to support the closed session. Existing facts and circumstances include:

- facts and circumstances that the agency believes are not known to a potential plaintiff;
- the receipt by the agency of a claim pursuant to the Government Claims Act or some other written communication threatening litigation;
- a statement made by a person in a public meeting threatening litigation on a specific matter within the responsibility of the legislative body; or
- a statement made outside a public meeting so long as the official or employee of the agency receiving knowledge of the threat makes a record of the statement prior to the meeting, and the statement is available for public inspection.



Closed Sessions (continued)

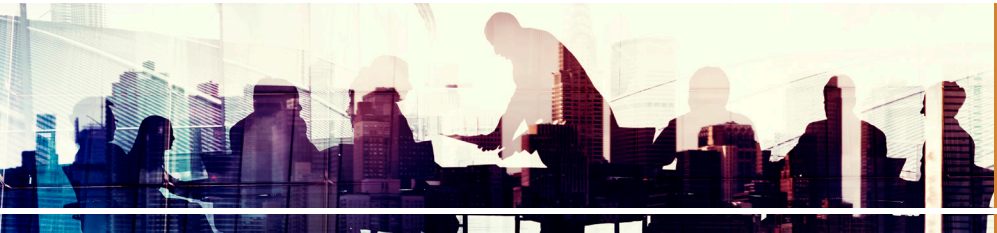
A legislative body may also meet in closed session to decide if the above facts and circumstances are present and thus whether the closed session is authorized.⁷⁴ The applicable safe harbor agenda descriptions are:

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2) or (3) [as applicable]: (Specify number of potential cases)⁷⁵
or
Initiation of litigation pursuant to Government Code section 54956.9(d)(4): (Specify number of potential cases)

Existing litigation. Where a legal action has already been initiated by or against the district, a closed session may be held to provide updates to the board and discuss strategy. The applicable safe harbor agenda description is:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION
Government Code section 54956.9(d)(1)
Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)
or
Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

Notes: The ability to meet in closed session for existing litigation only applies to litigation to which the district is a party. It is general understood, consistent with the safe harbor description, that the agency's attorney must be a participant in all litigation-related closed sessions.⁷⁶



“The real estate exemption is very limited.”

4. **Real estate negotiations.** A closed session is permitted for the legislative body to discuss with its real property negotiator the purchase, sale, exchange or lease of real property by or for the district. As part of the discussion, the legislative body may discuss the price and terms of the transaction. According to the Attorney General, this includes only the following:

- The amount of consideration that the district is willing to pay or accept in exchange for the real property rights to be acquired or transferred in the particular transaction;
- The form, manner, and timing of how that consideration will be paid; and
- Items that are essential to arriving at the authorized price and payment terms, such that their public disclosure would be tantamount to revealing the information that the exception permits to be kept confidential.⁷⁷

The real estate exemption is very limited. Discussions regarding related policy matters such as design work for the project, traffic, and EIR considerations, etc., are beyond the scope of the exemption.⁷⁸ The applicable safe harbor agenda description is:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Government Code section 54956.8

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)



Closed Sessions (continued)

5. **License applications.** A closed session is appropriate if the legislative body finds it necessary to discuss the license application of an applicant with a criminal record, and whether that applicant is sufficiently rehabilitated to obtain the license.⁷⁹ The applicable safe harbor description is:

LICENSE/PERMIT DETERMINATION

Government Code section 54956.7

Applicant(s): (Specify number of applicants)

6. **Security of public facilities and services.** A closed session is appropriate for the legislative body to discuss matters posing a threat to the security of public buildings and facilities as well as essential public services, and threats to the public's right of access to public services or facilities.⁸⁰ The applicable safe harbor description is:

THREAT TO PUBLIC SERVICES OR FACILITIES

Government Code section 54957

Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)



Compliance Tip

For convenience, many districts schedule closed sessions prior to commencement of the regular agenda and often hold such closed sessions in separate locations. Under § 54957, the public has the right to be present at such location and also has the right to address the legislative body regarding any agendaized closed session items under § 54954.3 prior to the legislative body adjourning into closed session.

Procedure for adjourning to closed session.

Prior to holding any closed session, the legislative body must disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may simply refer to the items as they are listed on the closed session agenda. This announcement may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.⁸¹

Who may be present in closed session?

Closed sessions should only include those members of the legislative body and support staff necessary to conduct business regarding the specific item (e.g., legal counsel, consultants, real estate or labor negotiators, etc.).⁸²



The Brown Act only applies to “meetings” of district legislative bodies.

Reporting after closed sessions.

The legislative body must reconvene in open session to report any “action taken” in closed session. In general, only final action on a matter need be reported (e.g., an agreement to buy property, settlement of a lawsuit where the other party has signed the agreement, acceptance of a resignation, etc.). Thus, for example, the dismissal or nonrenewal of an employment contract is not reported until the first public meeting following exhaustion of administrative remedies, if any. Once final approval occurs, the agency must disclose the action taken “upon inquiry by any person.”⁸³ Copies of contracts, settlement agreements, or other documents finalized in closed session must be made available within 24 hours of the action, or, in the case of substantial amendments or retyping, when complete.^{84,85}

Improper disclosure of closed session information.

The disclosure of confidential information acquired in a closed session is prohibited unless the legislative body authorizes the disclosure of the information. “Confidential information” means communication made in closed session that is specifically related to the basis for the closed session meeting. Violations of this disclosure prohibition may be addressed by any legal remedy, including: injunctive relief to prevent future disclosures; disciplinary action (against employees); or referral to a grand jury (for violations by members of the legislative body).⁸⁶

Note: A joint powers agency may authorize in its agreement or bylaws the disclosure of confidential information by members of the agency’s legislative body to their district legislative body in a closed session as well as to legal counsel of a member district.⁸⁷



Compliance Tip

Although § 54957.1(a)(1) indicates that real estate agreements may be approved in closed session, as a practical and political matter, it is prudent to take final action on such agreements in open session so that the public may more fully participate in the deliberations.

Adjournments and Continuances

Adjournments.

The legislative body may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may adjourn such meetings and if all members are absent, the clerk or secretary of the legislative body may declare the meeting adjourned. Written notice of the adjournment must be provided in the same manner as notice for special meetings.

A copy of the order or notice of adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours of the adjournment. When a regular or adjourned regular meeting is adjourned, the resulting adjourned meeting is a regular meeting for all purposes. If the order of adjournment fails to state a specific hour for the next meeting, the meeting must be held at the hour designated for regular meetings.⁸⁸

Continuances.

A duly noticed hearing may also be continued in the same manner as adjourned meetings. However, if the hearing is continued to a meeting that will occur in less than 24 hours, a copy of a notice of continuance must be posted immediately following the meeting at which the continuance was adopted.⁸⁹

Less
than
a quorum
may adjourn such
meetings and if all members
are absent, the clerk or secretary
of the legislative body may declare
the meeting adjourned. Written notice of the
adjournment must be provided in the same manner as
notice for special meetings.

Remedies and Penalties for Violations

Criminal penalties.

A member of a legislative body may be charged with a misdemeanor where (a) the member attends a meeting where an action is taken in violation of the Brown Act, and (b) the member intends to deprive the public of information to which the public is entitled under the Brown Act.⁹⁰

Note: If the challenged meeting involves only deliberation and no action is taken, there can be no misdemeanor penalty. Moreover, as with most criminal statutes, it is often difficult to prove criminal intent. As a result, criminal enforcement of the Brown Act is rare.

Civil action to prevent future violations.

The district attorney or any interested person may file a civil action to:

- Stop or prevent a threatened violation of the Brown Act.⁹¹
- Determine the applicability of the Brown Act to ongoing actions or threatened future action of the legislative body.⁹²
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.⁹³
- Compel the legislative body to tape record its closed sessions.⁹⁴
- Determine that an action of a Legislative Body violated the Brown Act and the action is null and void.⁹⁵

Opportunity for the legislative body to cure and correct alleged violations.⁹⁶

Before filing a legal action alleging that a legislative body violated the Brown Act, the complaining party must send a written “cure or correct” demand to the legislative body. The demand must clearly describe the challenged action, the nature of the alleged violation, and the “cure” sought, and must be sent within 90 days of the alleged violation (or 30 days if the action was taken in open session but in violation of § 54952.2, which defines “meetings”). The legislative body has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be commenced within 15 days after (a) receipt of written notice from the legislative body of such non-action, or (b) the expiration of the 30-day cure period if the legislative body does not respond to the cure request.



Remedies and Penalties for Violations (continued)

Opportunity for the legislative body to commit to cease & desist alleged past actions or practices.⁹⁷

Prior to commencing an action to determine if past actions of a legislative body are a violation of the Brown Act under § 54960, the complaining party must send a “cease and desist letter.” The cease and desist letter must be sent within nine months of the alleged violation. The legislative body may respond to the cease and desist letter within 30 days by making an unconditional commitment to cease and desist from the past action in open session at a regular or special meeting as a separate item of business, and not on its consent agenda, and providing such commitment to the complaining party. The commitment must state that:

- The legislative body has received the cease and desist letter; and
- The legislative body unconditionally commits to cease and desist from the challenged action; and

If the legislative body chooses to send an unconditional commitment agreeing to cease and desist from the challenged conduct within 30 days of receipt of the cease and desist letter, then no legal action can be commenced. Any party sending a cease and desist letter can commence a legal action challenging past conduct of a legislative body on whichever is earlier: (a) 60 days of receiving a response other than an unconditional commitment to cease and desist; or (b) within 60 days of the expiration of the legislative body’s 30-day time period to respond to the cease and desist letter.



Compliance Tip

The cure & correct and cease & desist options allow a legislative body to avoid litigation over alleged Brown Act violations unless it is abundantly clear that no violation occurred and a district wants to defend what it believes to be a correct policy or procedure.

And even if a legislative body waits to cure or correct an alleged violation until after a lawsuit is commenced, an action seeking invalidation must be dismissed.

Because a subsequent cure or correction cannot be introduced as evidence of a violation of the Brown Act, there is rarely a legitimate reason for a legislative body not to take any post-lawsuit steps to cure or correct an alleged violation if there is any question as to Brown Act compliance.⁹⁸



If a court finds that a legislative body violated the Brown Act, the plaintiff may be awarded costs and attorney fees.

Invalidation of certain types actions.

Only actions taken in violation of the Brown Act under the following circumstances may be invalidated:⁹⁹

- the basic open meeting provision;¹⁰⁰
- notice and agenda requirements for regular meetings and closed sessions;¹⁰¹
- tax hearings;¹⁰²
- special meetings;¹⁰³ and
- emergency situations.¹⁰⁴
- Certain actions taken in violation of the Brown Act will not be invalidated if they involve:¹⁰⁵
- substantial compliance;
- sale or issuance of notes, bonds or other indebtedness, or related contracts or agreements;
- a contractual obligation upon which a party has in good faith relied to its detriment;
- the collection of any tax; or
- the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

Award of costs and attorney fees.

If a court finds that a legislative body violated the Brown Act, the plaintiff may be awarded costs and attorney fees.¹⁰⁶ The costs and fees are the liability of the district and not its officers or employees. A district may only recover its costs and attorney fees if it wins and the court determines that the lawsuit was “clearly frivolous and totally lacking in merit.”¹⁰⁷

Scotia Community Services District

Staff Report

DATE: March 17, 2018
TO: Scotia Community Services District Board of Directors
FROM: Leslie Marshall, General Manager; Steve Tyler, Assistant General Manager
SUBJECT: SCSD Draft FY 2018/19 Budget

RECOMMENDATION:

The Administrative staff recommends that the Board review the Draft FY 2018/19 Budget, provide staff with comments, and direct staff to develop a Final FY 2018/19 Budget for Board approval in June.

ACTION:

Review Draft FY 2018/19 Budget

DISCUSSION:

Each year the District must prepare and adopt a budget for the coming Fiscal Year. The Draft FY 2018/19 Budget was developed by staff utilizing information from the FY 2017/18 Adopted and Mid-Year Budgets. The budget preparation process includes adjustments to the fee schedules. Through the Proposition 218 rate setting process in 2016, the Board adopted a five-year rate schedule that included annual increases to the water rates and wastewater rates by 1.5% on July 1st of each year through July 1, 2021. The residential rates for FY 2018/2019 are below:

Monthly Rates FY 18/19	Base	Flow (per 100 cf)	BOD (per lb)	TSS (per lb)
Water	\$64.81	\$2.74		
Wastewater	\$77.53	\$4.24	\$0.3736	\$0.5578
Raw Water		\$0.24		

Annual Benefit Assessments	
Storm Drainage	\$22.99
Parks and Recreation	\$205.92
Streets and Street Lighting	\$54.61

The budget and account numbers are similar to the Final FY 2017/18 Budget, with new account line items highlighted in light red.

The budget includes personnel services costs for contracted services *and* full-time benefitted staff for FY 2018/19. Staff has developed full and part-time job descriptions and a wage and benefit package in preparation for recruiting and hiring permanent SCSD staff.

Anticipated Capital Improvement Projects for the upcoming fiscal year have been outlined and color-coded for this draft budget. At this time, staff recommends cutting the red projects, and budgeting for 2/3 of the yellow projects (see attached budget). The yellow/red projects not budgeted for FY 2018/19 are proposed for next fiscal year FY 2019/20. Some Capital Improvement Projects are carrying over from FY 2017/2018 and have already been budgeted for (i.e. River Pump Controls).

Some cost-savings are expected by staff within this fiscal year. Budget line items for electricity are anticipated to decrease with the scheduled River Pump Motor Control Project, but the budget continues to reflect current electricity charges as the construction completion time-line is unclear at this time. Cost savings are also anticipated for insurance, as the District is now enrolled in a multi-program discount, with the addition of workers compensation insurance, and as staff will continue enrolling in trainings to receive more discounts the SDRMA's credit incentive program. These cost saving should result in a larger unexpended fund balance at the end of the year, which will be placed into reserve, like the previous fiscal year.

Staff will develop a 2018/19 *Final* Budget for Board review and approval, required, by law, to be approved and adopted, by Resolution, prior to June 30, 2018. Staff will prepare and circulate a Notice of Public Hearing for Adoption of the FY 2017 /18 Budget for the June meeting.

FISCAL IMPACT:

Attached FY 2018/19 Draft Budget

Scotia Community Services District
Fiscal Year 2017-2018 Operating Budget

Revenues

Fund Type	Account #	Treated Water	Raw Water	Wastewater	Streets & Street Lighting	Storm Drainage	Parks & Recreation	Admin	Total All Services
Interest Earnings	210	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ 500
Property Tax ¹	220	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contingency Fund Contribution	230	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Office Equipment/Furniture Capital Contribution	240	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SCSD Facilities Purchase/Loan	250	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Special Use Income	260	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ 500
2018/2019 User Fee Revenues	270	\$ 460,200	\$ 35,700	\$ 628,800	\$ -	\$ -	\$ -	\$ -	\$ 1,124,700
2018/2019 Benefit Assessment Revenues	280	\$ -	\$ -	\$ -	\$ 63,700	\$ 26,600	\$ 145,200	\$ -	\$ 235,500
Miscellaneous	290	\$ 100	\$ -	\$ 100	\$ 100	\$ 100	\$ -	\$ -	\$ 400
TOTAL REVENUES		\$ 460,300	\$ 35,700	\$ 628,900	\$ 63,800	\$ 26,700	\$ 145,700	\$ 500	\$ 1,361,600

Expenditures

		Treated Water	Raw Water	Wastewater	Streets & Street Lighting	Storm Drainage	Parks & Recreation	Admin	Total All Services
Personnel Services									
Attorney	300	\$ 8,400	\$ 400	\$ 8,800	\$ 1,000	\$ 400	\$ 1,000	\$ -	\$ 20,000
Auditor (Annual Audit)	310	\$ 5,040	\$ 240	\$ 5,280	\$ 600	\$ 240	\$ 600	\$ -	\$ 12,000
Board Stipend	320	\$ 5,460	\$ 260	\$ 5,720	\$ 650	\$ 260	\$ 650	\$ -	\$ 13,000
Bookkeeping/CPA Consultant	330	\$ 6,300	\$ 300	\$ 6,600	\$ 750	\$ 300	\$ 750	\$ -	\$ 15,000
IT Services	335	\$ 6,300	\$ 300	\$ 6,600	\$ 750	\$ 300	\$ 750	\$ -	\$ 15,000
Engineering	340	\$ 18,000	\$ 2,000	\$ 30,000	\$ -	\$ -	\$ -	\$ 2,000	\$ 52,000
Contract Admin/Operations/Maintenance Staff	350	\$ 70,000	\$ 8,750	\$ 70,000	\$ 4,375	\$ 4,375	\$ 8,750	\$ 8,750	\$ 175,000
SCSD Permanent Benefitted Staff	360	\$ 76,734	\$ 9,592	\$ 76,734	\$ 4,796	\$ 4,796	\$ 9,592	\$ 9,592	\$ 191,835
TOTAL PERSONNEL SERVICES		\$ 196,234	\$ 21,842	\$ 209,734	\$ 12,921	\$ 10,671	\$ 22,092	\$ 20,342	\$ 493,835
Materials and Services									
Permits, Licenses, Dues, Publications	400	\$ 2,000	\$ 1,500	\$ 2,500	\$ 200	\$ 200	\$ 600	\$ 3,000	\$ 10,000
Travel, Training, Meetings, Professional Development	401	\$ 1,000	\$ -	\$ 1,500	\$ -	\$ -	\$ -	\$ 3,000	\$ 5,500
Regulatory Penalties	402	\$ 5,000	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ 35,000
LAFCo Apportionment	403	\$ 750	\$ -	\$ 750	\$ -	\$ -	\$ -	\$ -	\$ 1,500
Lab Testing & Monitoring	410	\$ 4,000	\$ -	\$ 8,000	\$ -	\$ -	\$ -	\$ -	\$ 12,000
Treatment Chemicals	411	\$ 20,000	\$ -	\$ 20,000	\$ -	\$ -	\$ -	\$ -	\$ 40,000
General Supplies	412	\$ 5,000	\$ 100	\$ 10,000	\$ 1,200	\$ 2,000	\$ 2,000	\$ 500	\$ 20,800
Utilities, Communications	420	\$ 2,200	\$ 500	\$ 1,200	\$ -	\$ -	\$ 1,000	\$ 1,600	\$ 6,500
General Maintenance & Repair	430	\$ 7,500	\$ 500	\$ 15,000	\$ 500	\$ 500	\$ 1,500	\$ 1,000	\$ 26,500
Insurance, Bonds	440	\$ 20,000	\$ 5,000	\$ 40,000	\$ 5,000	\$ 600	\$ 2,000	\$ 100	\$ 72,700
Electrical	450	\$ 2,000	\$ 140,000	\$ 170,000	\$ 20,000	\$ -	\$ 1,000	\$ 2,000	\$ 335,000
Contracted Maintenance Services	460	\$ 3,000	\$ 1,000	\$ 20,000	\$ 1,000	\$ -	\$ 1,000	\$ -	\$ 26,000
Office Supplies	470	\$ 100	\$ -	\$ 300	\$ -	\$ -	\$ -	\$ 6,000	\$ 6,400
TOTAL MATERIALS AND SERVICES		\$ 72,550	\$ 148,600	\$ 319,250	\$ 27,900	\$ 3,300	\$ 9,100	\$ 17,200	\$ 597,900
TOTAL O&M		\$ 268,784	\$ 170,442	\$ 528,984	\$ 40,821	\$ 13,971	\$ 31,192	\$ 37,542	\$ 1,091,735

Other Expenditures											
Annual Debt Service on Capital Improvement Loans	500	\$	-	\$	-	\$	-	\$	-	\$	13,200
Transfer to Capital Reserve Fund	510	\$	12,000	\$	2,000	\$	14,000	\$	1,200	\$	400
Transfer to Equipment Replacement Reserve Fund	520	\$	3,000	\$	300	\$	4,000	\$	500	\$	200
TOTAL OTHER EXPENDITURES		\$	15,000	\$	2,300	\$	18,000	\$	1,700	\$	600
Capital Outlay											
SCSD Office Building ADA Upgrades	610	\$	10,500	\$	500	\$	11,000	\$	1,250	\$	500
SCSD Office Building Renovation	611	\$	3,150	\$	150	\$	3,300	\$	375	\$	150
Ball Park ADA Upgrades	612	\$	-	\$	-	\$	-	\$	-	\$	-
Winema Theater Roof Replacement	620	\$	-	\$	-	\$	-	\$	-	\$	-
Museum ADA Upgrades	621	\$	-	\$	-	\$	-	\$	-	\$	-
Carpenter Shop Roof Replacement	622	\$	-	\$	-	\$	-	\$	-	\$	-
Water Tank Inspection/Maintenance/Repair	623	\$	-	\$	-	\$	-	\$	-	\$	-
WTP Sodium Hypochlorite System	650	\$	-	\$	-	\$	-	\$	-	\$	-
WWTP Sedimentation Ponds 1-3 Solids Removal	660	\$	-	\$	-	\$	30,000	\$	-	\$	-
WWTP Sodium Hypochlorite System	670	\$	-	\$	-	\$	-	\$	-	\$	-
Log Pond Maintenance	671	\$	-	\$	-	\$	25,000	\$	-	\$	-
TOTAL CAPITAL EXPENDITURES		\$	13,650	\$	650	\$	69,300	\$	1,625	\$	650
TOTAL EXPENDITURES		\$	297,434	\$	173,392	\$	616,284	\$	44,146	\$	15,221
Unexpended Fund Balance		\$	162,866	\$	(137,692)	\$	12,616	\$	19,654	\$	11,479
EXPENDITURES + UFB + Prev. Rev.		\$	460,300	\$	35,700	\$	628,900	\$	63,800	\$	26,700
Recommended Operating Contingency operating contingency is recommended to be set at 2-months operating costs, or approx. 16% of O&M Costs											

v. 4/16/2018

Reserve Fund Balance

16/17 Unexpended Fund Balance Start	\$	199,229	\$	(179,512)	\$	205,851	\$	137,312	\$	37,429	\$	357,175	\$	(196,645)	\$	560,837
End																