

**CITY OF DANA POINT**  
**AGENDA REPORT**

Reviewed By: DH CM CA
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**DATE: MAY 15, 2007**

**TO: HONORABLE MAYOR AND CITY COUNCIL**

**FROM PATRICK MUÑOZ, CITY ATTORNEY**

**SUBJECT: OPPOSITION OF PENDING LEGISLATION: SB 964**

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**RECOMMENDED ACTION:**

That the City Council take a formal position opposing SB 964 (Romero) and formalize its opposition by sending a written statement to Senator Tom Harman urging his “no” vote on the bill.

**ISSUES:**

SB 964 would amend the Brown Act to severely restrict staff’s ability to communicate with Council Members. This measure would effectively end non-procedural communications between local agency staff and their legislative bodies outside of an open and public meeting. Key language in section 1 of SB 964 prohibits any communications between agency officers, employees, consultants and the legislative body that “advances or clarifies a member’s understanding of an issue” to a majority of the body. This section makes an exception only for communications related to time and place of meetings, travel arrangements, delivery of meeting materials, and similar procedural matters. The provisions in section 1 would fundamentally change the way public agencies operate.

The League of California Cities has asked for letters in opposition to the proposed legislation. Our office concurs with their view, and recommends the Council take a position in opposition to SB 964. A draft letter based on a sample letter provided by the League is attached as Supporting Document B.

**BACKGROUND:**

As noted above, SB 964 would significantly limit the ability of city officials to communicate with city councils outside an open and public meeting. While the Brown Act requires legislative bodies to hold meetings in an open forum, it also allows, under limited circumstances, meetings in closed sessions. Under the proposed legislation, every day staff communications, including memorandums, legal communications and informational briefings between staff and council members, as well as draft reports prepared by staff or consultants, would be required to take place during board meetings.

More specifically the broad sweep of this bill would prohibit essential every day communications to the local legislative body such as:

- Summary reports of the upcoming week's events and other items of interest from the agency's executive
- Memorandum from agency staff to the legislative staff unless the communication is part of an agenda packet and relates to an item on an agenda
- Attorney-client privileged legal communications from the agency's legal counsel
- Informational briefings between agency staff and individual legislative body members (recently found to be lawful under *Wolfe v. City of Fremont*)
- Any materials in support of a closed session that would not otherwise be included in the agenda packet
- Draft reports prepared by agency employees or consultants

The bill claims to enhance open and public meetings but in practice, would unnecessarily complicate the ability of a local governing body to properly communicate and function on behalf of their citizens.

Our office concurs with the view of the League that the proposed legislation is ill conceived. Ultimately this measure creates a layer of unnecessary official procedure that would hamper the locally elected legislative body's ability to efficiently attend to the matters that are most important to its constituents. It interferes with a Council's ability to seek an understanding about issues that help in making the most informed decisions possible.

In light of the above, we recommend that the Council agree to the request we received, take a position in opposition to SB 964, and authorize that a letter in opposition be sent on behalf of the City.

**FISCAL IMPACT:**

None

**ALTERNATIVE ACTIONS:**

Decline to take a position on SB 964, or take a position in support of that legislation.

**SUPPORTING DOCUMENTS:**

- A. [Text of SB 964](#)
- B. [City of Dana Point SB 964 Opposition Letter](#)

**ATTACHMENT A**

BILL NUMBER: SB 964      AMENDED  
BILL TEXT

AMENDED IN SENATE   APRIL 9, 2007  
AMENDED IN SENATE   MARCH 29, 2007

INTRODUCED BY      Senator Romero

FEBRUARY 23, 2007

An act to amend ~~Sections 54952.2 and 54957.5~~  
*Section 54952.2* of, and to add Section 54963.1 to, the  
Government Code, relating to local agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 964, as amended, Romero. Local agencies.

The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The act prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, with an exception for an authorized teleconference.

This bill would prohibit any use of technological devices to conduct a meeting of a legislative body among members who are in different locations. It also would prohibit any use of substantive serial communications by members of a legislative body of a local agency, or by any officer, employee, consultant, or designee of the members of the legislative body or of the local agency, to conduct deliberations, as defined, by a majority of the members of that legislative body.

The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure. The Ralph M. Brown Act provides that, notwithstanding any other provision of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act unless exempt from disclosure under that act. The Ralph M. Brown Act requires that these writings be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

This bill would provide that, notwithstanding any other provision of law, ~~all members of a legislative body of a local agency shall have an equal right of access to any writing of that agency and~~

~~would prohibit the agency from charging any member a fee to inspect or obtain copies of its writings. It also would provide that when any local agency official, employee, or agent prepares any writing that relates to any matter on the agenda of a meeting of the legislative body of that local agency, the writing shall be made available to all members of the legislative body at the time the agenda is posted, if the writing exists at that time, but in no event later than the time the meeting commences—~~ when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing .

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 54952.2 of the Government Code is amended to read:

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

(b) (1) Except as authorized pursuant to Section 54953, any use of technological devices to conduct a meeting of a legislative body among members who are in different locations is prohibited.

(2) Any use of substantive serial communications by members of a legislative body of a local agency, or by any officer, employee, consultant, or designee of the members of the legislative body or of the local agency, to conduct deliberations by a majority of the members of that legislative body is prohibited. For this purpose, deliberations include, but are not limited to, both of the following:

(A) Any communication that advances or clarifies a member's understanding of an issue, facilitates an agreement or compromise among members on an issue, or advances the ultimate resolution of an issue.

(B) Any communication of information that is not otherwise part of the agenda packet for a publicly noticed meeting of the legislative body if that information relates to an item on an agenda for a meeting of the legislative body, or is likely to be placed upon an agenda of a meeting in the near future. Deliberations do not include communication of information that relates solely to the time and place of meetings, travel arrangements, delivery of meeting materials, or similar procedural matters.

(c) Nothing in this section shall impose the requirements of this chapter upon any of the following:

(1) Individual contacts or conversations between a member of a legislative body and any other person that do not violate subdivision (b).

(2) The attendance of a majority of the members of a legislative body at a conference or similar gathering open to the public that

involves a discussion of issues of general interest to the public or to public agencies of the type represented by the legislative body, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the local agency. Nothing in this paragraph is intended to allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a legislative body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(4) The attendance of a majority of the members of a legislative body at an open and noticed meeting of another body of the local agency, or at an open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(5) The attendance of a majority of the members of a legislative body at a purely social or ceremonial occasion, provided that a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.

(6) The attendance of a majority of the members of a legislative body at an open and noticed meeting of a standing committee of that body, provided that the members of the legislative body who are not members of the standing committee attend only as observers.

~~—SEC. 2.— Section 54957.5 of the Government Code is amended to read:~~

~~—54957.5.— (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed by any person to all, or a majority of all, of the members of a legislative body of a local agency in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.~~

~~—(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats upon request by a person with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.~~

~~—(c) Nothing in this chapter shall be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42~~

~~U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.~~

~~—(d) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). Nothing in this chapter shall be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.~~

~~—(e) When any local agency official, employee, or agent prepares any writing that relates to any matter on the agenda of a meeting of the legislative body of that local agency, the writing shall be made available to all members of the legislative body at the time the agenda is posted, if the writing exists at that time, but in no event later than the time the meeting commences.~~

~~—SEC. 3.— Section 54963.1 is added to the Government Code, to read:~~

~~—54963.1. (a) Notwithstanding Section 6252.5 or any other provision of law, all members of a legislative body of a local agency, as permitted by law in the administration of their duties, shall have an equal right of access to any writing of that local agency.~~

~~—(b) A local agency shall provide access to its writings pursuant to this section in a nondiscriminatory manner and shall not charge any member of a legislative body any fee to inspect or obtain copies of its writings.~~

~~—(c) For purposes of this section, a writing is defined pursuant to subdivision (g) of Section 6252.~~

~~SEC. 2. Section 54963.1 is added to the Government Code , to read:~~

~~54963.1. (a) Notwithstanding Section 6252.5 or any other provision of law, when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing.~~

~~(b) For purposes of this section, a writing is defined pursuant to subdivision (g) of Section 6252.~~

**ATTACHMENT B**

May 15, 2007

The Honorable Tom Harman  
State Capitol Building, Room 313  
Sacramento, CA 95814

**RE: SB 964 (Romero) Local Agencies  
NOTICE OF OPPOSITION**

Dear Senator Harman:

I am writing on behalf of the City of Dana Point to inform you that we oppose SB 964 in its current form, and urge a “No” vote.

The City of Dana Point has a very strong and active community who appropriately expects their local officials to be able to address and make timely decisions on City policy in the most efficient manner possible. The broad wording of SB 964 will prohibit any agency staff communications with a majority of the governing body that “advances or clarifies a member’s understanding of an issue.” The measure would drastically limit council members’ ability to receive prompt information from their staff. This would shift time sensitive policy decision making authority away from a locally elected legislative body to city staff. Additionally, SB 964 substantially hampers the ability for a City Attorney to communicate legal information to a City Council.

Ultimately this measure creates a layer of unnecessary official procedure that would hamper the locally elected legislative body’s ability to efficiently attend to the matters that are most important to its constituents. It interferes with a Council’s ability to seek an understanding about issues that help in making the most informed decisions possible. The broad sweep of this bill would prohibit essential every day communications to the local legislative body such as:

- Summary reports of the upcoming week’s events and other items of interest from the agency’s executive
- Memorandum from agency staff to the legislative staff unless the communication is part of an agenda packet and relates to an item on an agenda
- Attorney-client privileged legal communications from the agency’s legal counsel
- Informational briefings between agency staff and individual legislative body members (recently found to be lawful under *Wolfe v. City of Fremont*)
- Any materials in support of a closed session that would not otherwise be included in the agenda packet
- Draft reports prepared by agency employees or consultants

The citizens of Dana Point expect their local government officials to be informed and well briefed on important community issues. They expect their council members to be ready to discuss community priorities in a meaningful and productive way. By limiting the allowable information to be presented to council members outside of an open and public meeting, an unnecessary delay will be created in decision making and will cause a back log of items that must be presented at already busy council meetings.

The provisions in SB 964 would complicate the ability of a local governing body to properly communicate and function on behalf of its' citizens. Until the bill is significantly amended, the City of Dana Point opposes SB 964, and urges a "No" vote.

Sincerely,

Diane Harkey  
Mayor

Cc: Senator Gloria Romero  
Assemblywoman Mimi Walters  
Brian Weinberger, Consultant, Senate Local Government Committee  
Anthony Thomas, Legislative Representative, League of California Cities