

Brown Act Cure and Correct Demand – Agenda Items 26-0216 and 26-0009 (Meeting of January 27, 2026)

Members of the Board of Supervisors:

I write in my capacity as President of the Taxpayers Association of El Dorado County to formally place the Board on notice of a Brown Act violation and to demand cure and correction pursuant to Government Code §54960.1, in advance of the Board’s meeting scheduled for January 27, 2026.

The agenda for that meeting lists two separate closed-session items, identified as Agenda Item 26-0216 and Agenda Item 26-0009, each described identically as follows:

“Conference with Legal Counsel – Significant Exposure to Litigation pursuant to Government Code Section 54956.9(d)(2). Number of potential cases: (1).”

This presentation raises two independent and compounding Brown Act defects.

1. Failure to Provide Meaningful Public Notice

While Government Code §54956.9(d)(2) permits closed-session discussion where a legislative body faces significant exposure to litigation, it does not dispense with the Act’s core requirement that agendas provide the public with meaningful notice of the business to be transacted, as required by Government Code §54954.2(a).

Here, the agenda language provides no factual context whatsoever regarding the general nature of the dispute, the subject matter giving rise to the claimed exposure, or why disclosure of any minimal description would compromise the County’s position.

As the Attorney General and California courts have repeatedly emphasized, statutory “safe harbor” language may not be used as a blanket substitute for meaningful notice. An agenda that merely recites the statute, without any descriptive content, fails to inform the public of what category of governmental activity is being discussed and frustrates the Brown Act’s purpose of transparency.

2. Duplicative Closed-Session Items With Identical Descriptions

The Brown Act concerns are compounded by the fact that two distinct agenda items are listed with identical descriptions, identical statutory citations, and the same stated number of potential cases (“1”).

This structure deprives the public of any ability to discern whether the same matter is being discussed twice, whether more than one substantive issue is being addressed under the guise of a single “potential case,” or whether closed session is being used to fragment or obscure discussions that should occur in open session.

The use of duplicative, indistinguishable closed-session items creates precisely the kind of opacity and misuse of closed session the Brown Act was enacted to prevent.

Demand to Cure and Correct

Accordingly, pursuant to Government Code §54960.1, I hereby demand that the Board:

1. Cure and correct any Brown Act violation arising from the closed sessions noticed as Agenda Items 26-0216 and 26-0009;
2. Clarify on the public record, to the extent permitted by law, whether these two items concern the same matter or distinct matters, and why separate agenda items were required;
3. Provide a legally sufficient agenda description for any closed session claimed under §54956.9(d)(2) that affords the public meaningful notice while preserving legitimate litigation privilege;
4. Refrain from using duplicative or content-free agenda language that obscures the scope or purpose of closed sessions.

This correspondence is intended to place the Board on notice prior to the January 27, 2026 meeting and to preserve all rights and remedies available under the Brown Act. Nothing herein shall be construed as a waiver of any statutory or equitable relief under Government Code §§54960 or 54960.1.

I respectfully request that this matter be addressed promptly and that the Board respond in writing within the time required by statute.

Respectfully,

Lee Tannenbaum

President, Taxpayers Association of El Dorado County