



Northern
California

May 3, 2021

Via U.S. Mail and Electronic Mail

Chico City Council
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Re: Secret Meetings Concerning the City of Chico's Unhoused Population and Related Brown Act Violations

Dear Honorable Chico City Councilmembers:

We write on behalf of the American Civil Liberties Union of Northern California to express our concern regarding the City of Chico's troubling treatment of its unhoused population and to highlight several related violations of the Ralph M. Brown Act.¹ The Council's conduct—namely holding secret meetings about Chico's shelter crisis and taking certain actions without sufficient notice or opportunity for the public to comment on this crisis—flies in the face of democratic principles. It also exposes the City to potential civil liability while jeopardizing hundreds of thousands of dollars in state and federal aid. The lack of sufficient services, housing, and shelter for those residing within Chico is a pressing and vital issue to the entire community; it should not, and indeed cannot, be addressed in secrecy or backroom deals.

The City has created a crisis by failing to address the needs of its unhoused population while simultaneously persecuting vulnerable people who lack secure shelter.

Every night in Chico, hundreds of people sleep outside.² These unhoused persons need adequate services, stable housing, and a secure environment. But the City is failing to meet such urgent needs. According to a recent staff report prepared for the Council, there simply is "insufficient capacity to shelter everyone experiencing homelessness in Chico."³

¹ Gov't Code §§ 54950 *et seq.*

² See Butte Countywide Homeless Continuum of Care, *Report of 2019 Point in Time Survey* (Sept. 2019), http://www.buttehomelesscoc.com/uploads/1/1/7/5/117500423/coc_-_2019_pit_survey_report_07-17-19.pdf.

³ Feb. 2, 2021 City Council Agenda Report, *Creating Shelter Options*, Agenda Item 5.2, https://chico-ca.granicus.com/MetaViewer.php?meta_id=74952.

Rather than work to expand its capacity and services, the City has instead resorted to criminalizing the everyday acts undertaken by unhoused people to sustain themselves.⁴ The effects are disastrous and cruel.⁵ By sweeping encampments and enforcing ordinances that punish sleeping, sitting, lying, resting, and even having belongings in public, the City is destabilizing the precarious position of its unhoused residents, penalizing their very existence.

The City should publicly engage with all stakeholders to address the shelter crisis in Chico. But instead, elected officials are meeting secretly in violation of the Brown Act.

On April 6, 2021, *Chico News & Review* published a news article reporting that, since January 2021, Mayor Andrew Coolidge and Councilmembers Sean Morgan and Kasey Reynolds have been convening each month to discuss and deliberate on “homeless issues” with other elected officials from the region, including Butte County Supervisors Tami Ritter and Tod Kimmelshue, as well as representatives for Assemblyman James Gallagher and Congressman Doug LaMalfa.⁶ The article also reported that City Manager Mark Orme, Chico Homeless Solutions Coordinator Suzi Kochems, and additional city staff and county personnel, some from the Department of Behavioral Health and the Department of Employment and Social Services have regularly attended the meetings as well.

While much more remains to be learned about these secret meetings,⁷ they likely violate the Brown Act. The Act—as you should know—commands officials to conduct their deliberations openly because Californians, “in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”⁸

⁴ See, e.g., Chico Emergency Ordinance No. 2556, Dec. 8, 2020 (adding criminal penalties for conduct committed in public parks); see also Chico Municipal Code §§ 9.20.030 (prohibiting “unlawful camping”), 9.20.050 (prohibiting “storage of personal property in public places”), 9.44.015 (prohibiting “sitting on sidewalks in commercial districts”), 9.43.030(B) (prohibiting “access to the civic center between the hours of 10:01 p.m. and 6:59 a.m.”), 9.50.030(B)-(C) (reinforcing code sections prohibiting “staying or camping overnight” and “stor[ing] personal property” in public places), and 12.18 (prohibiting enumerated activities in public parks).

⁵ See, e.g., Natalie Hanson, *Campers Moved Again by City*, Chico Enterprise-Record (April 2, 2021), <https://www.chicoer.com/2021/04/02/campers-moved-again-by-city-this-time-from-humboldt-park/> and Esteban Reynoso, *City of Chico Continues Homeless Eviction in ‘Triangle,’* Action News Now (Feb. 5, 2021), <https://www.actionnewsnow.com/content/news/City-of-Chico-continues-homeless-evictions-in-Triangle-neighbors-feel-much-safer-573733841.html>.

⁶ Ken Smith, *Closed to the Public*, Chico News & Review (April 6, 2021), <https://chico.newsreview.com/2021/04/06/closed-to-the-public/>.

⁷ The nature of these meetings, including information related to their purpose, scheduling, attendees, agendas, and notes, are the subject of a Public Records Act Request by the American Civil Liberties Union of Northern California submitted to the City on March 12, 2021 and supplemented on April 23. The City has yet to substantially produce documents in response.

⁸ Gov’t Code § 54950.

Accordingly, meetings falling within the Brown Act must—absent any special or emergency situation—be publicized in advance, follow a noticed agenda, be accessible, and provide an opportunity for the public to comment.⁹

Here, the Brown Act reasonably applies to the meetings convened and/or attended by Mayor Coolidge and Councilmembers Morgan and Reynolds. Multiple elected officials from around the region have been attending these monthly meetings, and, thus, the group is **not** “composed **solely** of the members of the legislative body that are less than a quorum.”¹⁰ This same group has also been meeting regularly for months without any reported end date to discuss the same subject matter: Chico’s unhoused population.

Moreover, if even one councilmember present at these meetings conveyed any portion of the meeting discussions to any other councilmember not in attendance, then such a communication would certainly violate the Brown Act.¹¹ As the California Supreme Court long ago made clear, “the intent of the Brown Act cannot be avoided by subterfuge” or “a concerted plan to engage in collective deliberation on public business” via private communications.¹² Other courts of appeal have recognized the same, concluding that the public suffers when “a number of the members sufficient to constitute a quorum of the legislative body has already been informed and deliberated, albeit serially, on a matter of public business by the time the matter reaches the stage of public discussion.”¹³ It is therefore immaterial that no action formally binding the Council may have taken place at these secret meetings. The Brown Act applies just as forcefully to “the collective acquisition and exchange of facts preliminary to [an] ultimate decision.”¹⁴

Lastly, it is troubling to hear that these secret meetings may already be resulting in city-wide policy decisions. As reported by the *Chico News & Review*, the “conversations occurring at the collaborative city/county group’s meetings” led Chico’s Homeless Services Coordinator to

⁹ *Id.* §§ 54954–54954.3, 54954.5–54956.5, 54956.7–54957.10, 54962.

¹⁰ *Id.* § 54952(b) (emphasis added).

¹¹ *See id.* § 54952.2(b)(1) (“A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”).

¹² *Roberts v. City of Palmdale*, 5 Cal. 4th 363, 376 (1993); *see also* 65 Ops.Cal.Atty.Gen. 63 (1982) (concluding city councilmembers had violated the Brown Act by holding a “series of closed discussions with citizens having matters of business pending before them to gather or convey information regarding those matters . . . on successive dates . . . planned to insure that a quorum of the council w[ould] not be present at any given meeting”); 42 Ops.Cal.Atty.Gen. 61 (1963) (opining that the Brown Act applies to “briefing sessions” by which employees of a local agency simply provided information to a gathering of members of the legislative body).

¹³ *Stockton Newspapers, Inc. v. Members of Redevelopment Agency*, 171 Cal. App. 3d 95, 103 (1985); *see also id.* at 101–03 (collecting cases).

¹⁴ *Sacramento Newspaper Guild v. Cty. Bd. of Sup’rs*, 263 Cal. App. 2d 41, 47–48 (1968).

inform at least one local advocate that certain assistance was no longer needed because the **Council** had adopted a position on the sufficiency of the City’s shelter beds—an alarming result considering that one member of the Council, Alex Brown, reported that she was unaware that these meetings were taking place.¹⁵

Future meetings involving councilmembers on shelter issues, including the new “Homeless Solutions Ad Hoc Committee,” should be public and in compliance with the Brown Act.

We urge Mayor Coolidge and all other councilmembers to stop participating in the secret, non-public meetings with city and county officials immediately. Any further discussion on issues concerning Chico’s unhoused population between elected officials in the region and other city and county personnel should be discussed openly in compliance with the Brown Act.

With respect to such future meetings, we note that Mayor Coolidge commented to the press on April 28 that, during a closed session at the most recent council meeting on April 26, the Council purported to create “a committee on solutions for the homelessness crisis.”¹⁶ While this “Homeless Solutions Ad Hoc Committee” may—depending on how it is conducted—be a positive development,¹⁷ the committee already appears to have run afoul of the Brown Act.

Specifically, the Brown Act obligates the Council to reconvene and “publicly report any action taken in closed session and the vote or abstention on that action of every member present”¹⁸ Here, however, the Council’s available records, including the video-recording of the Council’s meeting, do not reflect that the Council ever publicly reconvened to report any of the actions that

¹⁵ Smith, *supra* note 6.

¹⁶ Natalie Hanson, *Mayor Creates Homeless Solutions Committee to Respond to Local Crisis*, Chico Enterprise-Record (April 28, 2021), <https://www.chicoer.com/2021/04/28/mayor-creates-homeless-solutions-committee-to-respond-to-local-crisis/?fbclid=IwAR1NNx6sau7sFw1ZphRDVhR-IOQRYNRoy7TO-Uj6dvmWYFTVUxZGFkPKnCs>; *see also* Dani Masten, *Chico City Council Committee Taking New Steps to Tackle Homeless Crisis*, Action News Now (April 28, 2021), <https://www.actionnewsnow.com/content/news/A-new-Chico-City-Council-committee-taking-new-steps-to-tackle-the-homeless-crisis-574308501.html>.

¹⁷ Soliciting a broad range of community perspectives, including from unhoused people, is critical to the committee’s success. We were concerned to see that the speakers during the committee’s meeting on Friday, April 30, focused on speakers from the law enforcement community and those against the City’s encampments. *See, e.g., @nhanson_reports, Twitter* (April 30, 2021, 8:56 a.m.) https://twitter.com/nhanson_reports/status/1388160259139665932.

¹⁸ Gov’t Code § 54957.1(a); *see also id.* § 54957.7(b) (“After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Section 54957.1 of action taken in the closed session.”).

the Council took during its multiple closed sessions on April 26.¹⁹ The creation of the Homeless Solutions Ad Hoc Committee should have been disclosed in real time by the Council, not days after the fact by the media. This is especially true considering the “breakneck speed” at which Mayor Coolidge boasts the committee is performing its undisclosed functions.

The Council’s procedural deficiency on this point is not just reflective of sloppy governance. The specific directives given by the Council to this new committee, along with the Council’s description of how the committee will be staffed, dictate the scope of the Brown Act’s application to its work. While the committee is now ostensibly composed of only three councilmembers—Mayor Coolidge, Councilmember Huber, and Councilmember Tandon—the consistent presence of Councilmember Denlay at each meeting and any engagement by her or any other councilmember at the meetings could create a *de facto* quorum subject to the Brown Act’s strictures.²⁰ Such a result would then unequivocally prohibit the committee from employing its dubious practice of allowing the public to listen in to the committee meetings, but not to ask any questions. At the very least, saved recordings of these hastily-convened meetings should be posted to the City’s website so that those unable to attend can learn what was said.²¹ And even if this purportedly ad hoc committee is temporary and advisory in nature, the public is entitled to know the committee’s ultimate recommendations.²²

The Council’s description of its closed meeting agenda items and its use of the Brown Act’s litigation exemption reveals yet more troubling conduct.

At the Council’s meeting on April 26, the agenda reflects that the Council held a closed session on “existing litigation” and on “anticipated litigation” pursuant to certain exceptions codified in the Brown Act.²³ These exceptions are to be construed narrowly. As both the California Attorney General and the courts have emphasized, the purpose of the litigation exceptions is “to

¹⁹ The Council’s failure to report on any action items taken during its closed sessions is also problematic given the specious and legally deficient description of Agenda Item 7.4—“Closed Session Items that Arose After the Posting of the Agenda.”

²⁰ See Gov’t Code § 54952.2(c)(6); see also *Rowen v. Santa Clara Unified School Dist.*, 121 Cal. App. 3d 231, 234 (1981) (applying Brown Act to meetings where a quorum was present, but members were only focused on the informal collective acquisition and exchange of facts).

²¹ See City of Chico, *Homeless Solutions Ad Hoc Committee*, <https://chico.ca.us/post/homeless-solutions-ad-hoc-committee> (last visited May 3, 2021 and no recordings available).

²² *Stockton Newspapers*, 171 Cal. App. 3d at 102–03 (clarifying that the Brown Act’s exemption of advisory committees “contemplates that the part of the governing body constituting less than a quorum ‘will report back to the parent body where there will *then* be a full opportunity for public discussion of matters not already considered by the full board or a quorum thereof’”) (quoting 65 Ops.Cal.Atty.Gen. 63, 65 (1982)).

²³ Gov’t Code § 54956.9.

permit the body to receive legal advice and make litigation decisions **only**; it is not to be used as a subterfuge to reach nonlitigation oriented policy decisions.”²⁴

With respect to anticipated litigation, a closed session can only occur if a point has “been reached where, in the opinion of the legislative body of the local agency on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the local agency.”²⁵ The “existing facts and circumstances” giving rise to this exception pertain to only a handful of enumerated situations, all of which indicate that the Council must still disclose any relevant underlying facts and circumstances unless those facts are not yet known to the potential plaintiff.²⁶

Although the validity of the Council’s closed sessions on April 26 remains to be ascertained, the Council should be aware that the unfounded or overbroad reliance on the Brown Act’s litigation exceptions—either for current or anticipated cases—is bad practice and could also expose the City to actual liability.

The Council’s “substitute motion” to rescind Chico’s Shelter Crisis Declaration also violated the Brown Act.

As discussed, the Brown Act’s central purpose is to ensure that the public has an opportunity to provide informed and meaningful input to a legislative body before that body can take an action. This objective can only be accomplished if a governing body provides the public with sufficient notice of the business that it intends to conduct. Thus, as relevant to the Council’s regular meetings, the Brown Act requires that the Council “post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting” at least 72 hours in advance.²⁷ The Brown Act further directs that “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda.”²⁸

²⁴ *Trancas Prop. Owners Ass’n v. City of Malibu*, 138 Cal. App. 4th 172, 186 (2006) (quoting Cal. Dept. of Justice, Off. of Atty. Gen., *The Brown Act*, p. 40 (2003)).

²⁵ Gov’t Code § 54956.9(d)(2).

²⁶ *Id.* § 54956.9(e); *see also Fowler v. City of Lafayette*, 46 Cal. App. 5th 360, 369 (2020) (concluding that, under Section 54956.9, “[t]he only reasonable inference is that a record of a litigation threat to be discussed in closed session must be included in the agenda packet made available upon request before a meeting”); *California Alliance for Util. Educ. v. City of San Diego*, 56 Cal. App. 4th 1024, 1030 (1997) (ruling that Section 54956.9 requires “disclosure to the public of facts and circumstances which show that a public discussion of a particular matter is prejudicial to the agency’s interests”).

²⁷ Gov’t Code § 54954.2(a)(1) (emphasis added).

²⁸ *Id.* § 54954.2(a)(3); *see also id.* § 54957.7(a) (same for closed session agenda items).

At its April 6, 2021 meeting, the Council violated these explicit provisions when it took up action on Agenda Item 5.5. That noticed agenda item was titled: “Councilmember Brown Request - Outdoor Sheltering Opportunity.” The posted agenda elaborated only that “[a]t its meeting 3/2/21, the Council voted to agendize a discussion on an outdoor sheltering opportunity at the BMX site.”²⁹

Notwithstanding Agenda Item 5.5’s narrow parameters, the Council’s action on this item was incredibly broad. Just after Councilmember Brown offered her comments on Agenda Item 5.5, the Council took up and passed in a 5-2 vote a “substitute motion” to “direct staff to stop working on the BMX shelter concept, revisit other uses for CDBG [Community Development Block Grant] funds, and rescind the shelter crisis declaration.”³⁰

The Council’s vote on this “substitute motion” is squarely at odds with the Brown Act. Because the Council failed to provide *any* public notice that it intended, at the April 6 meeting, to consider either the use of CDBG funds or the rescission of the City’s Shelter Crisis Declaration, the vote must be invalidated and the directive to staff voided on the record.

Had the Council given proper notice and an opportunity for comment, members of the public (and the City’s own staff) could have educated councilmembers that a vote to rescind Chico’s Shelter Crisis Declaration was unwarranted, untenable, and unwise. First, the rescission was unwarranted because the needs of the unhoused in Chico still remain today as they did when the declaration was adopted in 2018. Over the last three years, the region has been challenged by the Camp Fire’s destruction of over 14,000 homes and complications stemming from the COVID-19 pandemic, which has exacerbated Chico’s shortfall of affordable housing and services. Second, the rescission was untenable because it is legally questionable whether a motion could ever be the proper procedural vehicle by which to rescind a declaration.³¹ Third, the rescission was unwise because it could jeopardize hundreds of thousands of dollars in state and federal funding, resulting in an early termination of vital services.³²

Perhaps in recognition of these glaring issues, Mayor Coolidge attempted to walk back the Council’s April 6 vote during the recent April 26 meeting. At this meeting, Mayor Coolidge

²⁹ April 6, 2021 City Council Agenda, Item 5.5, https://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=952&meta_id=76090.

³⁰ April 6, 2021 City Council Meeting, Item 5.5 (minute 3:31:14), http://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=952.

³¹ See, e.g., Kristian Lopez, Action News Now (April 9, 2021), <https://www.actionnewsnow.com/content/news/City-officials-clear-up-confusion-over-shelter-crisis-declaration-in-Chico-574174441.html>.

³² See, e.g., Health & Safety Code § 50212 (predicating a jurisdiction’s eligibility to receive Homeless Emergency Aid Program Funds on that jurisdiction’s declaration of a shelter crisis); see also Ian Hilton, *Councilmembers Brown, Huber React to City’s Homeless Agenda & Court Injunction*, The Orion (April 22, 2021), <https://theorion.com/86412/news/councilmembers-brown-huber-react-to-citys-homeless-agenda-and-court-injunction/>.

commented, in response to Councilmember Brown's request to agendaize further discussion around the Shelter Crisis Declaration, that the Council had no reason to "discuss something that was not done."³³ Nonsense. The Council explicitly voted "to direct staff to stop working on the BMX shelter concept, revisit other uses for CDBG funds, and rescind the Shelter Crisis Declaration" at minute 3:50:53 of the April 6 meeting.³⁴ Now, because that ill-considered action violated the Brown Act and created widespread confusion, the Council must publicly invalidate it on the record. **We urge the Council to cure this issue immediately.**

Conclusion

Governance shrouded in secrecy is an anathema to the democratic ideal. We urge you to stop hiding behind closed doors when deliberating on important issues concerning Chico's unhoused population and to provide the public with meaningful opportunities to comment. Your constituents, including unhoused people, can provide necessary and valuable insight. They are not obstacles to be avoided. Listening to and addressing their concerns is the very purpose of this Council.

Please let us know by May 17 if and how you intend to address the concerns raised in our letter.

Sincerely,



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³³ April 26, 2021 City Council Meeting [Adjourned April 20, 2021 Meeting], Item 6.3, http://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=967.

³⁴ April 6, 2021 City Council Meeting, Item 5.5 (minute 3:50:53), http://chico-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=952.

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