Woodland Opera House (WOH) Board of Trustees (BOT)
Meeting Agenda
September 29, 2025 7:30-8:30pm

Location / Platform: WOH Third Floor Meeting Room
Meeting Organizer: Jia-Min Rosendale, President
Facilitator: Jia-Min Rosendale, President
Note Taker: Emily Delk, Secretary
Objective: This special meeting has been called to review recent governance concerns raised from outside the organization and to take proactive steps to ensure the Opera House is legally protected and responsibly governed.

Agenda

#	Topic / Agenda Item	Speaker	Time Allocated
1	Call to Order ● Welcome and Reason for Meeting Statement	Jia-Min Rosendale, President	5 mins
2	Roll Call to Establish Quorum		3 mins
3	Approval of Agenda		2 mins
4	Public Comment on Agenda Items ● Members of the public may address the Board on items listed in this agenda (time limited at discretion of the president)		5-10 mins
5	Discussion and Action Items ● Review of governance concerns (Information Only) ○ Acknowledge receipt of external correspondence from community member ○ Clarify that the individual is not a current Board member, employee, or volunteer ○ Public Comment will be heard before Board Discussion ● Engagement of Legal Counsel (Discussion/Action) ○ Presentation of rationale for engaging legal counsel specializing in municipal law and public policy ○ Legal counsel recommendation and costs ○ Public Comment ○ Board Discussion ○ **Possible action:** *Motion to authorize the President to retain legal counsel on behalf of Woodland Opera House*		25 mins
6	Next Steps ● Set expectations for Board use of counsel	Jia-Min Rosendale	5 mins
7	Adjournment	Jia-Min Rosendale	10 mins

Upcoming Meetings

- WOH Board of Trustees Meeting: October 8th, 2025
- WOH Executive Committee Meeting: TBD

Notes

Matthew Abergel
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August 29, 2025

By Certified USPS Mail, Return Receipt Requested

Ken Hiatt, City Manager for the City of Woodland
300 First Street
Woodland, CA 95695

Ethan J. Walsh
Contract City Attorney for the City of Woodland
Best Best & Krieger LLP
555 Capitol Mall, 9th Floor
Sacramento, CA 95814

Courtesy copies by USPS First-class Mail

Rich Lansburgh, Mayor of the City of Woodland
300 First Street
Woodland, CA 95695

Tom Stallard, Mayor Pro Tempore of the City of Woodland
300 First Street
Woodland, CA 95695

Dear Messrs. Hiatt and Walsh:

Late this spring, I asked the City of Woodland whether the Brown Act should apply to the nonprofit corporation that operates the Woodland Opera House. The City and City Attorney did a legal analysis and reached the position that the Brown Act does not apply in this case. Having now had time, meanwhile, to study the issue myself, as a concerned stakeholder and not an attorney, I disagree. The City's analysis neglected to consider all of the foundational documents and mischaracterized, or simply missed the point of, the influential *Epstein* precedent. I believe that the documents and facts firmly require that the City of Woodland has a duty to subject the Woodland Opera House, Inc., to the Brown Act.

The detailed analysis that follows presents my own non-lawyerly but, I believe, legally sound examination of the foundational documents and applicable precedent. To summarize, my argument is founded on the following evidence:

1. The 1979 State-City Operating Agreement shows, particularly when viewed through *Epstein*, that the City, with the State's prior understanding and coordination, played a role in bringing the Woodland Opera House nonprofit into existence.
2. The 1981 Articles of Incorporation of the Woodland Opera House, Inc., demonstrates that the nonprofit was founded not for its own, independent purposes but to "render assistance" to the City and State in governmental "endeavors." (Ignored by City Attorney.)
3. The 1989 City-WOH, Inc., Agreement lays out the inextricable partnership between the City and the nonprofit entity, making clear that the nonprofit is not truly independent but remains subject to City and State control in multiple substantial ways. Together these three documents meet the two parts of "test A" for applying the Brown Act for an entity that acts, in the words of the 1979 Agreement, "on the City's behalf."

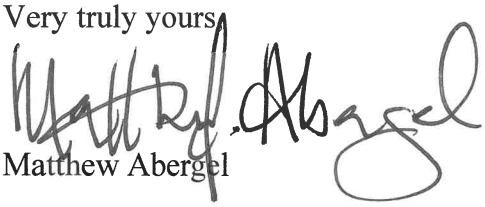
Additional evidence is to be found in the City's millions of dollars in one-time and ongoing contributions to the nonprofit organization and the City's clear designation of governmental authority to the nonprofit to operate the Theatre and Dance Annex in fulfillment of the City's promulgated action priorities plans.

Finally, we see that the relationship between the City and WOH, Inc., is so thoroughly integrated—operationally, financially, and legally—that WOH has effectively become the City's de facto Ministry of Culture, exercising delegated governmental authority over publicly funded cultural programming while avoiding the transparency requirements that govern all other city functions.

The Brown Act does apply to WOH, Inc. I hope that the City will acknowledge this legal fact. If not, I am prepared to take the matter to court and possess the means to do so. If the City should choose to fight this effort, it would waste taxpayer money merely to prevent taxpayers' oversight of a heavily subsidized quasi-governmental organization and would raise additional questions about whether the City has adequately performed its obligations to the State Parks system, to the taxpayers of Woodland, and in its fiduciary duty to the nonprofit board on which the City Manager holds the only permanent seat. Please reconsider your position on this matter. It is not only the right and legal thing to do but in everyone's best interest.

Thank you.

Very truly yours,



Matthew Abergel

Citizen Report and Request:
Brown Act Applicability to the Woodland Opera House, Inc.
Submitted to the City of Woodland by Matthew Abergel
mattabergel@sbcglobal.net (916) 524-1651
August 29, 2025

In a series of emails to me and in discussions, from what I've heard, with the staff, Board, and attorney of the Woodland Opera House nonprofit organization ("WOH, Inc."), the City of Woodland takes the position that WOH, Inc., is not subject to the Brown Act.

Probably because I am not an attorney, I was confused by the City's explanation for this position—so confused, in fact, that I started to study the matter in detail. I looked at the Ralph M. Brown Act itself (California Government Code Sections 54950 through 54963), relevant case law, the pertinent agreements between and among the State, the City, and WOH, Inc., and several germane documents beyond those that you mentioned having consulted in reaching your position. I have also, as you know, submitted public-records requests for documents that might shed further light on the issue. And admittedly, I relied upon my 20 years-plus of having been a supporter of and volunteer at the Opera House, experience that has given me an up-close view of how the Opera House operates, both before and after the arrival of its current Executive Director.

Having performed this rather intensive study of the issue, I must respectfully disagree with the City's analysis and resulting position. I believe that the Woodland Opera House, Inc., most certainly is subject to the Brown Act, and in the following pages, I lay out my rationale and provide direct documentary and factual evidence to support my position.

Specifically, I will show that the Woodland Opera House nonprofit entity must be subject to the Brown Act's transparency requirements based on three compelling legal grounds.

First, the City, in coordination with the State, played a decisive role in bringing this nonprofit entity into existence, establishing it not as an independent private organization but as a quasi-governmental creation.

Second, WOH carries out delegated governmental functions—most notably operating a state historic park, but also implementing projects conceived and funded by the City itself.

Third, the organization has received and continues to receive enormous amounts of public funding, including nearly $1.5 million in Measure E special sales tax revenue that is legally restricted to public facilities, services, and programs.

The evidence demonstrates that it is a legal fiction to characterize WOH Inc., as a truly independent private entity separate from City and State control and resource allocation. Rather, the reality is that Woodland Opera House, Inc., functions as a kind of extension of government and must therefore be subject to the Brown Act's open-meeting requirements.

I understand that a citizen's legal argument, regardless of its reasoning, may meet with skepticism from professional attorneys and city officials. However, I am fully prepared to engage qualified legal counsel to advance this argument in court if necessary. I believe that if the Brown Act is not applied to WOH, Inc., then the residents and taxpayers of Woodland deserve to understand how the City has abdicated its oversight responsibilities regarding what it calls one of its greatest public treasures, and how the City's preferential treatment of the Opera House has improperly blurred the essential boundaries between public accountability and private operations.

But I get ahead of myself. Ideally, we won't need to litigate this matter, and we won't need to publicly tarnish the reputation of the Opera House or of anyone at all. I truly believe that the best outcome for all parties–and especially for the Opera House and supporters like me who value its welfare–is for the City to follow the law by subjecting WOH, Inc., to the Brown Act.

City officials are undoubtedly well versed in Brown Act rigamarole, but I think that it is worth reminding ourselves why this legislation was passed more than seven decades ago:

> The people of this State do not yield their sovereignty to the agencies which serve them. The people, 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. The people insist on remaining informed so that they may retain control over the instruments they have created (California Government Code Section 54950).

It would be cynical to view the Brown Act as a punishment or affliction. It is a good thing, a celebration of democratic accountability–something we seem to need more than ever in this country. The act is commonly referred to as one of California's revered "sunshine laws" because it shines light on how government conducts the public's business. This principle of transparency becomes especially vital for an asset like the Opera House that represents both significant taxpayer investment and an irreplaceable piece of California cultural history.

What Led Me to This

For well over 20 years, my family and I have supported and taken delight in the Opera House, purchasing bricks, tiles, a seat, and part of a roof. During the pandemic's lockdown, my husband's online streaming productions were among the few monetized performances on the Opera House stage. In 2022, we directed *The Ghost of Woodland Opera House*, our original play dramatizing the Opera House's history and the heroism of the volunteer fireman who saved half the town from burning. Throughout these years, we loved the Opera House because of the good friends we made there and the feeling that, even when disagreements arose, as they do, the drama tended to stay on the stage. Though not perfect, the organization worked well; various stakeholders seemed to trust one another and to trust the leadership's skill and integrity. Then, with the departure of Executive Director Angela Baltezore in mid-2023, things started to change. What had been a collegial atmosphere gave way to secrecy, defensiveness, and what appeared to be a troubling disregard for proper governance protocols.

This concern led me to attend the WOH Board meeting in early May of this year, and what I witnessed troubled me deeply. The meeting was conducted by the Acting President, who is the

sister-in-law of the Executive Director—an extremely problematic conflict of interest. I witnessed a Board member ask for information to which he was unequivocally entitled, only to be met with prevarication that obstructed him from exercising his fiduciary duty to the Opera House. I learned after the meeting's closed session that a financial report—the recently resigned Board president's examination of irregular financial practices—was presented to the Board, but not in its original form. It had been, apparently, altered by the Executive Director's sister-in-law. I learned, too, that more Board meetings than not had lacked adequate or any budget or P&L statements.

At that May meeting, it was clear that factions had formed. That poses a problem for the Opera House itself–the physical historical landmark that belongs to the State Parks System. Like many arts organizations, WOH, Inc., operates on razor-thin margins. That is why it has a special fund, outlined in Article XI of its Bylaws, called The Woodland Opera House Endowment Funds, to be used for maintenance and repair of the Opera House facilities. However, the bylaws create a potentially paralyzing governance structure: any use of the fund's principal requires unanimous approval from all trustees in good standing. While the Board has previously managed to achieve unanimous consent for necessary repairs, the factionalism now evident suggests such consensus is now virtually impossible, since a single dissenting trustee can effectively block essential building repairs.

Meanwhile, the organization can't afford repairs from operating funds either, as their profit-and-loss statement shows they're operating well over a hundred thousand dollars in the red. I have heard it will cost $15,000 to repair a malfunctioning sewer drain—funds that may be inaccessible both due to board gridlock over endowment money and the lack of available operating funds. This governance breakdown directly threatens the City's interests: municipal taxpayers should not be forced to subsidize repairs to a 130-year-old building simply because a private board's internal conflicts prevent access to dedicated maintenance funds, especially when that building must meet rigorous State Parks preservation standards.
Is the City prepared to reach into its pockets for repairs to a 130-year-old building that must meet rigorous State Parks preservation standards?

Current Failure to Preserve

One particular repair issue situation perfectly illustrates this dysfunction. Currently, the only remaining operating historic toilet facility is not fully functioning. The original ladies retiring room is now a museum exhibit, while the tiny balcony-level water closet displays Victorian-era accommodations for working-class patrons. Today's audiences use modern restrooms at the south end of the building, made possible by hundreds of thousands of dollars in Measure E Special Sales Tax funding from 2006.

The sole original toileting facility still in use is located in the basement dressing rooms. This lone toilet serves cast, crew, volunteers, contractors, and employees throughout production weeks. But since April/May, the drain pipe has been malfunctioning. WOH staff posted warnings that while the toilet may be used for "#1," "#2" must be avoided to prevent sewage backups in the already-cramped quarters. This "#1 Only" sign remains posted months later.

I cite this problem not only because it clearly matters in its own right but because it symbolizes the larger dysfunction. The Opera House is clogged and not running well and can't afford to fix things. My husband and I would consider contributing toward the toilet repair, and I believe we can rally others to do so as well, but only if we know that the City and Opera House are in full compliance with the law.

(Unfortunately, I don't know contract law well enough to say for sure, but I suspect that the WOH nonprofit's potential inability to afford repairs notwithstanding, the City is not relieved of its obligations for "all costs of" Opera House maintenance under Paragraph 12 of the 1979 State-City Operating Agreement, which remains in effect for another seven years.)

Legal and Compliance Issues Too

In the early summer, I became aware of problems at the Opera House potentially even more difficult to handle than a backed-up toilet. Contrary to IRS and California Attorney General guidance, the nonprofit does not have a written conflict-of-interest policy. When I urged Board members to prioritize the adoption of a written policy, some of them thought that they already had one but could not find it, and others said that they would try to get to it by the end of the year, but at present, they were too busy planning their annual awards night. Much worse, I learned that the Executive Director was violating California laws designed to protect contract workers and employees. I have solid proof that at least once and possibly many more times he directly violated California's new Freelance Worker Protection Act.

And I have a document that strongly suggests that on numerous occasions in the first half of this year, he violated California labor law pertaining to the misclassification of workers. If true, this is a serious offense that could expose the organization, the City, and even the State to significant legal liability. And imagine the headline:

State Labor Laws Violated at State Park

I called this to the attention of the WOH staff and the Board, and I was met with the same *laissez-roulez* attitude: *We'll look into it. Meanwhile, we have awards, and a summer show, and a fall show—and you should see those kids dance!*

I also made my concerns known to Mr. Hiatt, the City Manager, when he allowed me a five-minute phone conversation before his regular work day started. He said we'd speak again, but we did not. Then the City let it be known to me and others that the City was addressing public concerns with two measures:

1. Ordering an audit of WOH, Inc.; and
2. Telling WOH, Inc., it needed (I'm paraphrasing here) to show more transparency in a Brown Act kind of way, but not really under the Brown Act legally, but in an entirely "voluntary" way that showed "good faith" to the public.

Like several other community members to whom I have spoken, I got the impression—wrongly, it turns out—that the City was subjecting WOH, Inc., to the actual Brown Act instead of simply encouraging an unwritten, unenforceable policy of "greater transparency."

As for the audit, I don't understand how the City justifies ordering an audit of an organization that the City Attorney maintains is an entirely independent private entity; clearly, however, the 1989 Operating Agreement between the City and WOH, Inc., allows for such an audit. Problem is, from what I last heard, the City had not yet committed to a timeline for the audit. More importantly, I wonder whether the audit's findings will be made public—or will the City hide the audit under the guise of "work product" or attorney-client privilege and release a one-page statement saying, "Hey, everybody, we did an audit. We found some small problems. Rest assured we took care of them." Ultimately, I am glad that the City, for its own purposes, has ordered an audit, but I do not regard it as a substitute for the ongoing transparency and public oversight that the Brown Act requires for an entity that not only receives such substantial public resources but maintains inextricable ties to the very City government that intends to audit it.

As for the WOH Board's new "transparency" policies, let's not pretend that they are binding requirements and responsibilities. The Board's own website reveals how carefully they've hedged their transparency claims: "While the Woodland Opera House is not a legislative body mandated by the Brown Act, we choose to conduct business openly—allowing open meetings, public notification, and opportunities for public participation." Notice the deliberate language here—"we choose" and "allowing"—positioning transparency as a beneficent concession rather than an obligation. While these recent efforts are not unwelcome, they amount to little more than a show pony—lacking the enforceability, deadlines, and clear rules that make the Brown Act effective. With this "voluntary" and "good-faith" transparency that the Board recently started "allowing," fundamental questions remain unanswered: when, for example, will the Board be allowed to go into closed session? Under the Brown Act, closed sessions must be called only for several clearly defined reasons, but under this Potemkin Village policy, presumably the Board can retreat into closed session whenever it wishes, thereby dodging the very transparency it has *chosen* to provide.

Announcing the audit and telling WOH to promulgate a sounds-good but toothless transparency policy was a smart PR strategy, but ultimately, that dog won't hunt.

While examining the current problems at and governing documents of the Opera House, I have found myself wondering, *Where has the City been while these problems have festered?* Under the 1989 Operating Agreement, echoed by the WOH Bylaws, City Manager, or designee, holds a permanent regular voting seat on both the Board and the nominating committee of WOH, Inc. Since 1989, the Operating Agreement has been modified, but it appears the City never made any attempt to remove the City Manager, or designee, of that seat on the WOH Board; no, the City wanted to retain that control and power.

So when the Executive Director's sister-in-law became the Acting President and, in my estimation, abused that position, where was the City Manager, or designee, to ask, "Um, do we really think this is a good idea?" When the Board went months without financial reports or statements, where was the City or designee asking how the Board could possibly have a proper meeting without basic budget docs? And when Board members let so many important matters slide, why did the City Manager, or designee, not point out to the many less-experienced Board members new to nonprofit governance that it's not all fun and galas, that they have a fiduciary responsibility to an organization with a $1.3 million annual budget, a priceless historic state park

owned by the people of California, and hundreds of donors, employees, contractors, and volunteers, and other stakeholders?

Please understand that I wish in no way to imply a moral equivalence between Woodland Opera House's issues and this summer's fireworks tragedy in Esparto; nevertheless, it is impossible to deny the reality that our region is highly susceptible right now to public and media concerns about lack of oversight and conflicts of interest in local government. Now would be a particularly bad time for the City of Woodland, the seat of Yolo County, to court bad press related to "a breakdown in the system of local, state and federal regulations" (State Senator Christ Cabaldon), "strong public perception of conflicts" (Yolo County Supervisor Mary Vixie Sandy), and "concerns about oversight" and lack of proper coordination between the State and local government (KCRA 3 News). Instead, the City should strive to "fully support anything that will reassure people that they're getting the facts. Our people need and deserve a process without any internal bias or conflict" (Assemblymember Cecilia Aguiar-Curry). Fortunately, in the case of the Opera House, a means and procedure for doing so already exists and simply needs to be properly applied: the Brown Act.

The Legal Obligation to Apply the Brown Act to WOH Inc.

City officials are undoubtedly familiar with the Brown Act because it "applies to the 'legislative bodies' of all local agencies in California, e.g., councils, boards, commissions and committees," according to the *The Brown Act: Open Meetings for Legislative Bodies (2003)*, published by the California Attorney General's Office.

Government Code Section 54952(c) specifically extends the Act to "a board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity" that meets certain criteria under two tests, classified by the law as A or B. It is the criteria of test A that pertain specifically to the Woodland Opera House, Inc., and its special, unique relationship with the City of Woodland:

> "(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity."

Having studied this issue with some care, I believe that WOH Inc., easily meets both of the criteria set out by test A. By looking at the relevant documents that created the current State-City-WOH Inc., operating partnership, we can see that the WOH nonprofit must be subject to the Brown Act and that to avoid doing so would be, in the words of the California Court of Appeal, "[t]o turn a blind eye to [. . .] a subterfuge [that] would allow City (and, potentially, other elected legislative bodies in the future) to circumvent the requirements of the Brown Act, a statutory scheme designed to protect the public's interest in open government." (*Epstein v. Hollywood Entertainment District II Business Improvement District*, 2001.)

So let's look at those relevant documents.

THE DOCUMENTS

In the 1970s, concerned local citizens, historic preservationists, the City of Woodland, and the State Parks System came together and coordinated with one another to save the Woodland Opera House from the wrecking ball and a proposed plan to demolish it for a parking lot. They formed a partnership–I don't think there is any other word for it than a partnership, or at the very least a coordinated plan to preserve the Opera House. I get the impression that the City and State thought that the project might take a few years when, in fact, it wound up taking over a decade. This partnership/coordinated plan was effected formally, over a ten-year span, with three legal documents, and I believe that we must read these three documents both individually and together to get the full picture of how the Woodland Opera House came to be what it is today and why the Brown Act must apply. To the best of my knowledge, all three documents are still actively in force.

1. The 1979 Operating Agreement between the State of California and the City of Woodland;
2. The Articles of Incorporation of the Woodland Opera House, Inc., as a nonprofit corporation;
3. The 1989 Operating Agreement between the City of Woodland and the Woodland Opera House, Inc.

1979 Agreement

Document: "Operating Agreement for the Woodland Opera House," between the City of Woodland and the State of California, acting through the Department of Parks, dated November 20, 1979.

This document envisions and lays the foundation for a grand and lengthy plan: "the restoration, and the operation care, maintenance, and control of . . . the Woodland Opera House," which had already been, according to Paragraph 3, "approved . . . for inclusion in the State Park System" by "the State Park and Recreation Commission on April 20, 1979."

It is important to note that both "inclusion in the State Park System" and this Operating Agreement for the Woodland Opera House, between City and State, long predate the 1981 creation of the Woodland Opera House, Inc., nonprofit organization.

And it is in this 1979 agreement, in Paragraph 13b, that we find the explicit acknowledgment of the governmental coordination that triggers Brown Act coverage under *Epstein*. In 1979, the State and City agreed that while "City will henceforth operate the state park," the reality was that "City intends to authorize the Woodland Opera House Board of Trustees to manage and operate the subject property on the City's behalf and State shall not withhold its consent to requests in furtherance of this agreement, and such authorizations and arrangements to be nevertheless subject to this agreement."

Frankly, I think this single clause of the 1979 Agreement suffices to meet both criteria of "test A" of applying the Brown Act. The clause tells us that the State and City are anticipating, coordinating, and planning for ("State understands," "City intends," "this arrangement") the creation, in the future, of the Woodland Opera House Board of Trustees and that the City (along with the State's "understand"ing and "authorization" of the "arrangement") "intends" to delegate

governmental functions ("authorize [. . .] to manage and operate [. . .] on the City's behalf") to the WOH nonprofit entity.

The 1979 language becomes even stronger when we consider it in light of the foundational ruling in *Epstein v. Hollywood Entertainment Dist. II Bus. Improvement Dist.* of 2001. Further below I will detail how *Epstein* shows us that the 1979 State-City Operating Agreement makes it necessary that the City of Woodland apply the Brown Act open-meeting requirements to WOH Inc.

Reliance on an Overturned Legal Ruling?

I should point out that City Attorney Ethan Walsh and I have already discussed, if briefly, the *Epstein* case. In my email to the City I asked that this case be considered in the City's legal analysis, and in an email reply to me, Ms. Ferrara of the City of Woodland wrote that the City Attorney had relied on *Epstein* in concluding that the Brown Act should not apply in this case. Ms. Ferrara wrote,

> While the *Epstein* case that you mention in your memo does indicate that the Brown Act should be interpreted broadly to apply to nonprofits were [*sic*] the City was involved in the creation of the nonprofit, the Court in that case acknowledged that it would not apply to preexisting nonprofits that later enter into agreements with public entities. The Opera House board appears to fit into this latter category, and the Brown Act wouldn't apply.

This statement begs the question, *At which* Epstein *case was the City looking*? I figured we were both looking at the 2001 ruling, the controlling ruling made by a three-judge panel, with Justice Croskey writing the opinion for the California Court of Appeal. The appellate court reversed the 1999 Superior Court decision by Judge Torres, and the 2001 Court of Appeal ruling became the controlling and precedential authority on this issue. But your argument seems to be relying on the *overturned* ruling of 1999; it appears that you are quoting not from Justice Croskey's opinion but from his summary of what had happened in 1999 in the lower court.

Of that 1999 case, Justice Croskey writes that Mr. Epstein's "motion for a preliminary injunction was denied after the superior court concluded that the Brown Act did not apply because (1) the POA [nonprofit entity] had not been created by City, and (2) the POA had preexisted the creation of the BID II by at least two years." This is the only reference in the 2001 *Epstein* case that I can find that in any way echoes your argument to me that "the Court in that case acknowledged that it would not apply to preexisting nonprofits that later into agreements with public entities." Again, I am not a lawyer, but it seems odd to me that you base your argument on the overturned 1999 decision by Judge Torres, and that you miss or mischaracterize the appellate court's 2001 opinion. The appellate court goes to great lengths to explain why the 1999 logic–which is the logic you espoused in articulating your position to me–was wrong.

So I confess–I'm thoroughly confused. Did the City Attorney simply make an innocent mistake? We all do that sometimes, but City Attorney, as a specialist in municipal law, of which the Brown Act is an important and long-established part, is held to a higher standard of expertise, so the innocent mistake theory seems unlikely. I suppose also, though I don't want to believe it, that the City Attorney could have deliberately misled me, hoping that a busybody troublemaker like

me could be dismissed with reference to *some* ruling, even an overturned ruling. But surely a City Attorney would not stoop to such a tactic? Finally, the last theory I must consider is that I, lacking legal training, have failed to comprehend the City Attorney's argument and the support that it cites—yet this, too, seems unlikely given that, in my reluctance to make false accusations, I have read the City's analysis and the *Epstein* ruling dozens of times, and I have asked others to read them too, and we just don't see what I'm missing.

In any case, there's an amusing irony to be found here: Even if the City Attorney's argument were correct, even if the 1999 court's rationale still stood, the City's argument based on that rationale is still flawed because the basic chronological facts are wrong. Yes, the Opera House nonprofit, founded in 1981, preexisted the 1989 Operating Agreement, but the nonprofit did *not* predate the 1979 Operating Agreement in which the State and City were already planning for the WOH nonprofit and incorporating that "arrangement" into their legally binding agreement. So the City's chronological argument, based on an overturned ruling and not adhering to the actual timeline, seems to be, well, tenuous at best and deceptive at worst.

This interpretation of the *Epstein* ruling aligns with official guidance from the California Attorney General's office. Additional insight into this interpretation of the law can be found in the California Attorney General's publication *The Brown Act: Open Meetings for Legislative Bodies* (2003). The Attorney General writes on page 6:

> Ordinarily, these private corporations or other entities will be nonprofit corporations. In some instances, they are created by the governmental entity to support the efforts of the governmental entity. Other times they are privately created and, to some degree, may partner with a governmental entity to accomplish a common goal.

As I understand the history, the creation of the WOH Board in the 1980s aligns precisely with this definition: The WOH Board was privately created, but in collaboration and partnership with the City and State, "to accomplish [the] common goal" of preserving the Opera House, raising funds for its upkeep, providing public access to the state park, and providing entertainment to the community while anchoring the City's efforts to revitalize the historic downtown area.

With the creation of the Theatre and Dance Annex at 520 Court Street, within the City Hall Complex and using voter-approved sales-tax revenue, the City reiterated its partnership with the WOH Board, delegating to WOH authority and responsibility for fulfilling parts of the 2016 Action Plan's high priorities.

Then, too, if we are considering the purposes for which the WOH nonprofit was created, we should turn an eye toward WOH Inc.'s, 1981 Articles of Incorporation. Here we do find reference to fundraising, but that purpose is far from the singular or even principal purpose, which is, rather, "to render financial and managerial assistance to the City of Woodland and the State of California in its [?] endeavors to improve, maintain, and operate the Woodland Opera House." Consequently, I do not see the basis for Mr. Walsh's assertion that the WOH nonprofit "was created by a group of citizens to raise funds for the restoration of the Opera House." The written record seems not to support that claim and, in fact, seems to dispute it. And once again I

am left wondering why the City of Woodland is providing such sketchy information to a simple inquiry seeking clarification of the City's responsibilities under the law.

But enough of that. Let us move forward by looking more closely at the 1979 Agreement and at how the *Epstein* ruling (2001) tells us that we should understand that agreement with regard to the Brown Act, for the facts in *Epstein* remarkably resemble the facts here in Woodland. First, it is important to see that the Agreement did not set up a simple one-and-done transaction; it is initiating a multi-year process during which several key activities will take place: The City will take occupancy of the Opera House, at least $1.3 million will go toward the building's restoration, with strong oversight and ultimate control retained by the State, and "arrangements" will be made for the then-nonexistent Woodland Opera House Board of Directors to take over operations on the City's behalf.

The Epstein ruling concludes that, for the purposes of applying the Brown Act, a large number of "esoteric" bodies is included. It tells us that direct creation is not necessary. And when we turn back to the 1979 Agreement, we see that the clause showing the City's intent to hand over operations to the WOH Board lines up quite neatly with the Epstein explanation of what is meant by "created by the City." Under Epstein, I believe that we must read Para. 13b as fitting the definition of "created by," with the City having played a role in bringing about the nonprofit's existence.

Without this preexisting arrangement and plan between State and City in 1979, WOH, Inc., would have had no express purpose to incorporate as it did, with the name that it did (a name already identified and being used by the City and State) in 1981. Furthermore, as I'll show below, the 1981 Articles of Incorporation of the nonprofit seem to harken back to the 1979 Agreement and further clarify the nonprofit's purpose, which is to render assistance to the State and City. Unless one believes in some kind of telepathy, it is impossible to believe that the nonprofit would be founded to render such aid if the City, with the State's approval, had not been coordinating the "arrangement" since at least 1979. Under Epstein, this meets the definition of the City having played a role in bringing about the existence of the nonprofit. Without this governmental coordination, there would have been no express purpose for an entity to incorporate in 1981 with the specific mission of providing governmental assistance.

To borrow specific language from the *Epstein* ruling, WOH Inc., clearly did not just *happen to be available* to render assistance to the State and City eventually; this was always, in the words of the 1979 Agreement, the City's "intent," which likewise suggests that the City played an important role in creating the nonprofit under Epstein's broad reading of "created by." Under *Epstein* (and also under the *Longshoremen* case from which *Epstein* draws), requiring that the Brown Act apply where government "played a role in bringing [an entity] into existence," the City's formal intent followed by the nonprofit's incorporation with the anticipated name and purpose clearly meets the test.

In legal writing, isn't it true that the verb "intends" and the noun "intent" carry special significance? The 1979 Agreement says that the "State understands that City intends to authorize the Woodland Opera House Board of Trustees to manage and operate" the state historic park. To me, that "intends" is loud and clear. This isn't casual language or wishful thinking—it's a formal

declaration of the City's planned course of action, made with the State's full understanding and cooperation. The timing tells the whole story: In 1979, the City formally announced its intention to have a Woodland Opera House Board take over operations, and then, remarkably, exactly such a nonprofit appeared in 1981 with precisely that name and purpose. Under the Epstein ruling of 2001, this sequence of events clearly demonstrates that the City, with the State's understanding and authorization, played a significant role in bringing the WOH nonprofit into existence, thereby satisfying the first criterion of test A for applying the Brown Act.

It is important to understand the broader significance of what was being established in 1979. This multiyear, very costly, and ambitious project was never simply a group of local historical preservationists trying to save a derelict building from the wrecking ball. This document makes it clear that the State and City actively and at great expense and with considerable planning took up the creation of a new state park in downtown Woodland–a historical landmark that would eventually become the cornerstone of the Downtown Woodland Historic District, listed on the National Register of Historic Places. The Woodland Opera House is not simply a publicly-owned building; rather, it serves essential public functions beyond those of a performance venue, the "jewel in the crown" in the City's efforts at downtown economic revitalization and a rare example of pre-1900 cultural and social history. Presumably it was these factors, and not merely the interests of a few local historical preservationists, that led to the State's, City's, and federal government's sizable contributions to the project. In brief, the maintenance and operation of the Opera House are functions typically carried out by government, not by private entities, which I'll discuss in greater detail later.

Finally, it's worth noting that this 1979 Agreement makes it clear that the Opera House is not merely a performance venue or public assembly space. Paragraph 11C, "Public Access," says that '[w]hile this agreement is in force and effect, the subject property shall, at reasonable times, be accessible and subject to the use and enjoyment of all citizens of the State of California.' It's reminding us that we mustn't forget that this is a state park—a public facility that belongs to all Californians, not just theatergoers who can afford tickets. This public access requirement reinforces that whoever operates this facility is essentially managing public property–a State Historic Park–for the benefit of all citizens, not just patrons of a theatre. That's about as governmental as it gets.

In its email communications with me, the City explained that the City Attorney "spoke with Jim Nolan, one of the early board members to get some historical context" to ascertain information about the founding and creation of the Woodland Opera House nonprofit corporation. I appreciate Mr. Nolan's willingness to share his knowledge and memories of the organization's early years, and I'm sure his perspective provided valuable historical context about the people and circumstances involved in getting the Opera House project off the ground. However, I found it puzzling that the City Attorney would rely primarily on oral history when the 1981 Articles of Incorporation—the foundational legal document that explicitly states why the nonprofit was created—are readily available on the Secretary of State's website. It took me less than fifteen minutes to locate and review this document, and presumably someone with specialized knowledge of municipal law would know exactly where to find such records.

Based on Mr. Nolan's recollections and other sources, the City Attorney concluded that the Opera House nonprofit "was created by a group of citizens to raise funds for the restoration of the Opera House" and later "took on the responsibilities that the City had to the State under their operating agreement." While this account captures part of the story, it doesn't align with what the nonprofit's own Articles of Incorporation actually say.

The 1981 Articles of Incorporation of WOH, Inc.

The 1981 Articles of Incorporation really shouldn't be overlooked because they speak directly to the reasons, in the nonprofit's own words, for the organization's founding and because chronologically and substantively they emerge so clearly from the 1979 Agreement referenced above. The document is short—only one and a half pages. Most of the language sounds like boilerplate for setting up a nonprofit corporation in California, with the notable exception of Section II, which describes this particular organization's "specific purposes for which the corporation is organized":

> To promote improvement and use of the Woodland Opera House and to render financial and managerial assistance to the City of Woodland and the State of California in its endeavors to improve, maintain, and operate the Woodland Opera House.

The term that immediately jumps out is "managerial assistance" because it so directly connects back to the 1979 Agreement between the City and State, which speaks of the "authority to manage" the Opera House. In 1979, the State gave the authority to manage the Opera House to the City. Then, in 1981, the Woodland Opera House, Inc. is incorporated specifically to "render [. . .] managerial assistance." The Articles clearly have their origin in the 1979 Agreement.

To put this language in context, I looked up the Articles of Incorporation of other performing-arts organizations in this region. In its Articles of Incorporation, The Lambda Players, a now-defunct LGBTQ theatre in Sacramento, says that its purpose was "to educate the general public about gay and lesbian culture . . . [with] public performances of gay and lesbian theater and helping to develop new gay and lesbian plays." The New Conservatory Theatre, originally founded in San Francisco in 1981, keeps it short and sweet: "to engage exclusively in artistic activities in the form of educational and performing programs." The Acting Company, founded in Yuba City in 1984, incorporated "to foster and encourage the performing and dramatic arts and to erect appropriate facilities for presentation of the performing and dramatic arts." In its 1988 Articles of Incorporation, the Pinole Community Players state that their "specific purpose [. . .] is to provide cultural arts for and to the community and surrounding area for all ages." The difference between these examples and the WOH Inc. Articles pops right out: The others focus entirely on the educational and/or performative aspects of running a theatre and serving the public directly, while those of WOH mention nothing about performances but focus on "render[ing] financial and managerial assistance to the City of Woodland and the State of California." While theater nonprofits typically incorporate to advance the arts, education, or cultural programming for the public, WOH Inc.'s Articles reveal an entirely different purpose: to assist government entities with their responsibilities.

The specific wording is telling. "Render" here seems to mean to give or provide—something that private entities do not normally do for the government unless it's through taxation or contractual

obligation. The WOH nonprofit's stated purposes concentrate not on what the founders wished to do *of their own accord and inspiration* but instead to focus on the government's ("its") "endeavors." The very endeavor here is not of the nonprofit's original intent or devising but is rather in furtherance of the purposes set forth by the City and State.

The Operating Agreement of 1989

The "Operating Agreement for the Woodland Opera House" begins by referencing the 1979 Agreement between the State and the City:

> Whereas, on November 20, 1979, the City of Woodland entered into an Agreement with the State of California for the operation of the Woodland Opera House located in Woodland, California, and
>
> Whereas, that Agreement provided that the City of Woodland could transfer the operation and management of the Woodland Opera House to the Woodland Opera House Board of Trustees

These *whereas* clauses are crucial. They demonstrate without question that this 1989 Agreement between the City and WOH, Inc., is a direct outgrowth of the 1979 Agreement between the State and the City. Remember that at the time of the 1979 Agreement, WOH Inc., did not yet exist (it was incorporated in 1981), yet the State and City were already planning for, expecting, and relying upon the nonprofit's creation.

Furthermore, this language sounds familiar to me as a real estate investor—almost as if the State and City always intended to use WOH Inc., as a kind of pass-through entity, a vehicle whereby the State and City could retain substantial control and influence over the Opera House State Park while pushing off certain elements of liability, financial responsibility, and quotidian chores to an ostensibly "private" entity that would remain under their effective control.

The bulk of the Agreement goes on to show the full scope of the effective control that the City and State retain in the Opera House:

Construction Priorities (Paragraph 5): While the Board of WOH Inc., must continue to carry out construction work originally funded and begun by the City and State (plus a federal grant), the State retains the power to "prioritize the items." This arrangement delegates governmental construction management functions to the nonprofit while retaining governmental control over priorities—using the City of Woodland and WOH Inc., as its agents to exercise what would otherwise be direct state responsibilities.

Mandatory Occupancy (Paragraph 6): The 1989 Agreement states, "From the date of this agreement, Board shall have the obligation to occupy and protect the opera house on the terms and conditions herein set forth." This language is notably different from typical tenancy arrangements. Rather than granting rights or permissions to occupy, the Agreement imposes a legal obligation to occupy the State Park—essentially delegating the governmental function of state park protection and stewardship to the nonprofit. The timeline for this mandatory occupancy is established not by the nonprofit's own choosing, but by the City and presumably the State. This mandatory assignment of governmental responsibilities, rather than voluntary

assumption of rights, further suggests that WOH Inc., is functioning as a vehicle for carrying out duties assigned by government entities rather than pursuing independent private activities.

Fundraising and Construction Control (Paragraph 7): This paragraph demonstrates the State's retention of control while effectively making WOH Inc., a de facto agent of the State Park System's restoration team. From the documents and news articles, it appears that the original $1.3 million in government funding intended to complete the Opera House restoration had been spent by the projected 1989 completion date, yet the restoration remained far from finished with no additional government money available. At that point, the State and City turned to WOH Inc., as quasi-governmental fundraisers to complete the "endeavors" begun but not finished by the government.

Even though the government expects WOH Inc., to raise funds for this government project, the State retains "the right to disapprove … plans and specifications, "all of which must be made "in accordance with a General Plan approved by the State." This is not the language of tenancy or of an independent concessionaire—say, an operator of a pro shop at a municipal golf course. This is the language of governmental control over an entity that has been delegated core governmental functions: public facility construction and state park development.

Operational Control: State Park Rules and Public Access

Rules and Regulations (Paragraph 8B): We begin to see something that sounds as though the WOH Inc., Board might be afforded some autonomy, allowed "to adopt rules and regulations for the use and enjoyment of the Opera House." But this sentence is immediately followed by the proviso that these Board-adopted "rules and regulations . . . shall conform to and be consistent with the rules and regulations adopted by the State and generally applicable to the State Park System, including the Opera House." This provision effectively delegates the governmental function of state park rule-making to the nonprofit, while ensuring those rules remain consistent with broader governmental policy. The Opera House is not just a government-owned building but is part of the State Park System and must be operated as such.

Public Access Requirements (Paragraph 8C): This paragraph doubles down on the above: It requires that the Opera House be "accessible and subject to the use and enjoyment of all citizens of the State of California" and prescribes specific opening times and times for guided tours. Here we see WOH Inc., exercising the traditionally governmental function of ensuring public access to state facilities—a core responsibility of state park management that has been delegated to the nonprofit while remaining under governmental oversight. WOH Inc., is not renting a theatre; it is serving as the government's designated agent to carry out public access mandates that are fundamental governmental responsibilities. As one goes through this document, the fiction put forth by the City Attorney about WOH Inc., being an independent organization looks as preposterous as a Gilbert & Sullivan operetta.

Financial Control and Public Facility Development

Government-Style Pricing and Public Facility Mandate (Paragraph 8E): This paragragh requires that any charges, fees, or collections made by the Board "shall be limited to the actual needs for maintenance, control, and operation, and for development of such property to provide additional public facilities." This language is extraordinary for several reasons. First, WOH Inc., is not

permitted to set market rates or retain profits—they're limited to government-style cost-recovery pricing based on "actual needs." But more telling still, any surplus funds must be used "to provide additional public facilities." This requirement effectively delegates the core governmental function of public facility development to the nonprofit—a responsibility that is normally the exclusive domain of government agencies. Nonprofits are not typically in the business of developing and providing public facilities, yet WOH Inc., is required to function as the State's designated agent for expanding state park infrastructure, exercising what would otherwise be direct governmental responsibilities.

Annual Reports and Financial Oversight (Paragraphs 8F and 8G): These paragraphs demonstrate the City's ongoing financial control over WOH Inc. The City requires annual reports from the Board and retains the power of unfettered inspection of "[t]he books, records, and accounts kept by the Board." The City demands access to "detailed records showing the source of funds used to finance … improvements or acquisitions" at the Opera House. While IRS Form 990 does require some disclosure of a nonprofit's largest donors, nonprofits typically retain discretion to protect the anonymity of the majority of its donors who wish to remain anonymous. Here the City is overriding that standard nonprofit prerogative, asserting governmental oversight authority that goes beyond normal nonprofit regulatory requirements. How does this square with the City's claim that WOH Inc., is an independent nonprofit that just happens to occupy and run a government-owned building?

Content Control: The "Good Taste" Standard

The *Epstein* ruling (2001) places considerable importance on the City of Los Angeles's having retained substantial control of and power over the nonprofit to which it had delegated certain functions. We see that same retention of control and power in this 1989 Agreement, with numerous examples. For a nonprofit that operates a historic theatre, a particularly noteworthy power retained by the government is found in Paragraph 17: "The subject matter of performances at the Opera House [. . .] shall be in conformance with good taste and subject to the provisions of Government code Section 11135 through 11139.5." This is huge! The WOH nonprofit must make sure that its performances conform "with good taste"—but whose good taste? The only possible reading is the good taste of the City and State. In other words, the government, not the nonprofit, remains the final arbiter of what shows may or may not be produced on the Opera House stage. California Government Code Section 11135 is the state's comprehensive anti-discrimination law, which prohibits discrimination "on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation" in any program or activity "that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state." The 1989 Agreement requires WOH performances to comply with both "good taste" and Government Code Section 11135-11139.5, giving the government the power to shut down any show that it deems not in good taste or in violation of state anti-discrimination law—a dual requirement of subjective governmental taste standards plus objective state anti-discrimination law compliance that treats WOH exactly like a government-operated theater, not an independent nonprofit that merely contracts with the government. In this case, we see that this is not a truly independent arts

organization: Down to the granular level of programming "good taste," the government steers the ship.

Structural Control: The City Manager's Permanent Board Seat

Perpetual Governmental Presence (Paragraph 25): Beyond the historical evidence of the City's role in bringing WOH Inc., into existence, there may be an even more compelling argument lurking in Paragraph 25 of the 1989 Agreement. This provision grants the City Manager a permanent seat on both the Board of Trustees and the Board's nominating committee—a level of structural control that raises intriguing legal questions about ongoing governmental creation and control. Unlike other Board members who are elected and subject to term limits, the City Manager serves in perpetuity and cannot be removed by the nonprofit's normal governance processes. More significantly, as a permanent member of the nominating committee, the City Manager exercises gatekeeping power over who can even be presented as candidates for Board leadership positions. This reminds me of something out of British history and the Monarch's ability to appoint members of Parliament who would exercise the sovereign's voice in legislative affairs.

If the Epstein test asks whether the government "played a role in bringing" an entity "into existence," one might reasonably ask whether the City continues to play a role in bringing about each new configuration of WOH Inc.'s governance through its permanent nominating committee presence. This ongoing structural control mechanism suggests that WOH Inc. doesn't simply have historical governmental origins—it remains perpetually dependent on governmental participation for its basic corporate governance functions. Whether this constitutes continuous "creation" under Brown Act jurisprudence would be an interesting question for legal counsel to explore. At the very least, Paragraph 25's requirement of the City Manager's or City Manager's designee's regular (therefore, voting) seat on the Board and nominating committee causes the claim of WOH Inc.'s institutional independence and separation from the City to look naive or negligent or both, and I am having a hard time understanding why the City would provide such sketchy [maybe "possibly spurious" or "hazy"? You used "sketchy" earlier] and poorly researched information to a member of the public seeking clarification of a law integral to California municipal law.

Liability Arrangements: Joint Operations in Practice

I don't claim to understand enough about liability law to fully parse the provisions, but something looks fishy here and I think a smart lawyer could figure it out. What I think I'm reading is that the nonprofit Board indemnifies the City and State against their own "concurrent or sole negligence," which seems preposterous—if WOH Inc., were truly independent, why would they agree to cover the government's liability for the government's own mistakes? Then the next paragraph acknowledges that when lawsuits arise, courts will likely apportion liability between the Board, City, and State, suggesting even the City recognizes they're so intertwined that they expect to be sued together. This liability arrangement seems to reveal the artificial nature of any claimed separation—the City wants WOH Inc., as a liability shield when convenient while acknowledging they operate as joint entities. And frankly, while it doesn't help

my Brown Act argument, it just stinks that the City wants indemnification even for its own "sole negligence." The way not to be liable for negligence is not to be negligent!

The Bigger Picture: A Quasi-Governmental Entity

While not explicitly stated, we can discern the State's and City's motives in planning, as far back as 1979, for the future creation of WOH Inc. It would allow the government to complete a project that would enhance the state's park portfolio and the City's downtown revitalization efforts while shifting significant financial responsibility to a quasi-private entity. Crucially, the government would retain substantial control over operations while the nonprofit's earnings would not be freely at the Board's disposal but could be directed toward projects favored by and benefiting the City and State. In essence, the arrangement creates a captive fundraising and development arm that bears financial risk while remaining under government direction—privatizing the costs while socializing the control and benefits.

I am not suggesting that any of this has been unlawful or even unethical, but I am vigorously proposing that the arrangement makes WOH Inc., subject to the Brown Act. I don't think the government can have it both ways—creating a quasi-private entity it played a role in bringing into existence that carries out important delegated governmental functions, while claiming that entity isn't subject to the Brown Act laws designed to ensure public scrutiny of and participation in the use and operation of public resources. Can the government really expect to have it both ways?

Modification Agreement of 2004

In the City of Woodland records available online, there is a "Modification Agreement" dated Nov. 9, 2004, signed by persons who were at that time the City Manager, the City Clerk, and the Executive Director of Woodland Opera House, Inc. This document, while not particularly important on its face, contains revealing background information within its Recital, which all parties "acknowledge" as "true and correct."

Recital E states that "the Board is responsible for completing restoration work contemplated under the State agreement [of November 20, 1979]." The language is quite specific: this Recital is not referring to the 1989 Operating Agreement between the City and WOH Inc., but explicitly to the 1979 Agreement between the State and City. This is extraordinary because it shows that even though WOH Inc., was not party to the 1979 Agreement and did not yet exist in 1979, WOH Inc., in 2004 "is responsible for completing restoration work contemplated under the State agreement" of 1979. This demonstrates that the City, State, and WOH Inc., itself all understand the nonprofit as stepping into the shoes of the original government parties—continuing a project already begun by the City and State rather than launching an independent venture.

This arrangement positions WOH Inc., not as an independent contractor or tenant, but as the designated vehicle for carrying forward the government's pre-existing restoration project. WOH Inc.'s work is not conducted "at arm's length" but rather as a direct extension of the governmental arm already in motion. Furthermore, Recital F confirms that "The Board has completed the State restoration work as required by Section 5" of the 1989 Agreement. WOH Inc., is not pursuing work of its own choosing but completing work that the *State has required* for the *State's* State

Park. These are not "tenant improvements" that a commercial tenant installs for its business needs; this is restoration work mandated by the State to preserve California history. WOH, Inc., is functioning as the State's agent, carrying out delegated governmental functions under State requirements and oversight—exactly the type of arrangement that triggers Brown Act compliance.

It is a shame that this Modification Agreement, easily found in City records and offering valuable "historical background" in its recitals, was not considered by the City in its analysis of whether the Brown Act ought to apply to the Woodland Opera House, Inc. Meanwhile, I have heard that an analogous legal analysis was conducted by WOH Inc.'s, independent counsel and presumably stands as the justification for the WOH website's assertion that the organization is not a legislative body mandated by the Brown Act. Unfortunately, I have not yet been privy to that second analysis, but while waiting to read it, I shall hope that it considers all of the essential documentary evidence and does not, for whatever reason, ignore inconvenient information. Don't the rules of professional conduct require legal analyses to consider all relevant facts rather than selectively reviewing only favorable documents? As a nonlawyer, I am inexpert in the rules of professional conduct pertaining to lawyers, but in view of the Opera House's straitened financial circumstances, I'm willing to cover the legal costs for an explanation of the matter.

Finally, with regard to the Modification Agreement, it is worth noting that while the original Operating Agreement between the City and WOH Inc., was executed in or around 1989, this 2004 Modification Agreement reaffirms all but very few provisions of the 1989 Agreement, showing that the City's relationship to and with WOH Inc., had not substantially deviated from the relationship anticipated and planned for as far back as the 1979 Agreement. The idea that WOH Inc., is an independent organization in the creation and existence of which the City did not play a role and which does not exercise delegated governmental functions increasingly looks chimerical.

BEYOND THE FOUNDING DOCUMENTS: "SUBSTANCE OVER FORM"[1]

The City Annex/TADA–an Expansion of the City-nonprofit Partnership

The documents addressed so far have all dealt specifically with the Opera House per se—the state historic park at Second and Main streets in Woodland. But that historic landmark is not the only publicly owned building operated by the WOH nonprofit organization. The City-WOH partnership extends well beyond the Opera House building itself, providing even clearer evidence that WOH is carrying out delegated government functions and therefore falls under Brown Act requirements. In 2016, the City of Woodland entered into an arrangement to lease the "City Hall Annex"—a City-owned building that is part of "The City Hall Complex"—to WOH

[1] While it is not an argument I am equipped to develop in detail without the help of legal representation, it is worth noting that the *Epstein* case (2001 appellate decision) emphasizes the importance of "substance over form," and I include this section that goes beyond the founding documents to show that in numerous ways, the substance of the relationship between the City of Woodland and WOH, Inc., is one that calls for public accountability and transparency through the Brown Act.

for the nominal rental of $1.00 per year. The Annex has always been a City facility and remains one.

The City's own "Action Plan 2016," available as a PDF on the City's website Document Center, provides compelling documentation of this delegated authority arrangement. Pages 25 and 26 detail not only the lease agreement but also the City's substantial financial commitment: an approved "adjustment" in Measure E funding of up to $475,000 for "building improvement costs in support of the Woodland Opera House's reuse of the Annex for theatre and dance educational programming."

The City's substantial financial commitment to this arrangement extends far beyond the $475,000 in improvement costs. The City itself has identified the fair market rental value of the Annex at $5,000 per month, meaning the nominal $1 annual lease represents a $59,999 yearly subsidy to WOH. Since the arrangement began in 2016, this ongoing opportunity cost—combined with the initial $475,000 in building improvements—represents a total municipal investment of over $1 million to date and counting. This extraordinary financial commitment demonstrates that the City views WOH's programming not as private activity worthy of support, but as the implementation of the City's own governmental priorities worthy of major public investment.

Most significantly for Brown Act analysis, page 26 of the Action Plan explicitly states: "The City's 2015-19 Consolidated Plan lists youth services and parks/recreational facilities as high priorities. The remodeling of the Annex for youth theatre and dance programming will support Consolidated Plan high priorities. Construction of the necessary improvements at the Annex began in approximately February 2016."

This language demonstrates that the City has directly delegated authority to WOH to implement specific municipal priorities identified in the City's official Consolidated Plan. WOH is not merely receiving City support for its own independent programming—it is carrying out functions that the City has designated as "high priorities" in its formal planning documents. The Annex arrangement shows WOH serving as the City's chosen vehicle for delivering youth services and recreational facilities, core municipal functions that clearly satisfy the Brown Act's test for delegated governmental authority requiring public meeting transparency.

(In demonstration of further commingling of purposes and funding, it should be noted that the City Hall Annex/TADA also houses Opera House set and props storage, provides office space for the WOH Executive Director, and hosts pop-up performances that are extension of the Opera House's programming and not part of TADA's educational programming.)

$1.5 Million in Measure E Special Sales Tax Reveals City's True View of WOH

The Woodland Opera House website states that it does not receive City funding. This claim is fundamentally contradicted by documented evidence of substantial Measure E special sales tax revenue flowing to the organization—in addition to the over $1 million invested in the Annex arrangement described above.

In June 2006, Woodland voters passed Measure E, which imposed a half-cent sales tax with very specific language. The ballot measure told voters they were approving funds "for general City services, programs and facilities." Notice that the ballot language says nothing about funding nonprofit organizations. Voters were promised that their additional tax burden would support public facilities, services, and programs—not private entities.

The accompanying Advisory Measure D on the same ballot asked whether any voter-approved sales tax should fund "expansion of the Woodland Library, City Hall and Opera House." This grouping is revealing: the City presented the Opera House alongside the library and City Hall—both indisputably city-owned, city-run public facilities. When seeking taxpayer approval for these expenditures, the City treated the Opera House as simply another public facility providing "general City services, programs, and facilities."

According to the City's own Annual Measure E Spending Reports, approximately $1.5 million in Measure E funds were directed to "Opera House" projects over the tax's duration. For perspective, this exceeds the Measure E funding allocated to "Library Repairs" and "Library Facilities Improvement" combined during the same period.

The City's Actions Contradict Its Legal Position

This substantial public investment creates a fundamental contradiction in the City's current legal stance. When the City needed voter approval for Measure E, it explicitly grouped the Opera House with other public facilities and promised voters their tax dollars would fund "general City services, programs and facilities." The City cannot now claim that the Opera House operates independently of government oversight while simultaneously justifying $1.5 million in taxpayer investments by characterizing WOH's work as providing public services and programs.

The City's own actions demonstrate that it views WOH not as a private nonprofit deserving support, but as a public entity carrying out delegated municipal functions in arts and culture. It may not be too great a stretch to say that WOH, Inc., has become the City's de facto Ministry of Culture. When millions of dollars in public funds are involved—funds specifically approved by voters for public facilities and services—the Brown Act's transparency requirements become not just legally appropriate but democratically essential.

The taxpayers of Woodland, who approved Measure E based on promises of funding public facilities and services, deserve transparency in how their substantial investment is being managed and administered. The City cannot have it both ways: treating WOH as a public facility when seeking voter approval for funding, then claiming it operates as an independent entity exempt from public meeting requirements when citizens demand accountability.

Semantic Sleight of Hand

The Woodland Opera House website's claim that it receives no public funding is semantic sleight of hand that obscures the true scope of public support. Beyond the $1.5 million in Measure E special sales tax revenue, it would be wrong to overlook the enormous ongoing annual support provided to the organization in the form of free or heavily subsidized rent. In a

state where millions of people pay more than 50% of their income on housing, providing free or heavily subsidized space constitutes substantial public funding—regardless of what euphemism officials prefer to use. When the State and City provide valuable real estate at no cost or below-market rates, that represents a direct transfer of public resources every bit as significant as writing a check. To claim this isn't "funding" is to engage in word games that obscure the true financial relationship and the public's legitimate interest in transparency.

Lack of Separation between the City and Woodland Opera House, Inc.

Coordinated Legal Strategy to Dodge Brown Act Requirements?

On August 13, 2025, you wrote to me by email to say this: "I suggested that you address your question to WOH's counsel because WOH is not my client, so ultimately the Board will look to their own counsel on advice as to whether or not they are subject to the Brown Act." This statement is both misleading and legally revealing. You also mentioned, Mr. Walsh, that WOH counsel has prepared a legal analysis concluding that the WOH nonprofit is not subject to the Brown Act. This coordination between the City Attorney and WOH's "independent" counsel demonstrates that rather than operating as separate entities, they are jointly strategizing to avoid transparency requirements.

The WOH Board's Brown Act obligations arise precisely from its relationship with the City of Woodland—not from WOH operating independently. This makes Brown Act compliance squarely within the City Attorney's purview, not a matter for WOH's separate counsel to determine. Deflecting to WOH's counsel while simultaneously coordinating legal positions with that same counsel might suggest a deliberate pattern of circumventing established transparency requirements designed to ensure public accountability over the use of public resources.

Physical and Operational Porousness: Heritage Plaza as WOH's Backyard

The faintly drawn line between the City and WOH extends beyond documents and practices to simple geography. The Opera House routinely treats Heritage Plaza—a City park—as its own property, with the City's sometimes tacit, sometimes express approval. Starting in fall 2024, Opera House staff began setting up a Will Call desk before every performance, sometimes five times a week, on Heritage Plaza property. Through a public records request, I learned that the City had no knowledge of this practice and had issued no special permit for the Opera House to conduct commercial activity on City property. I know of no other organization or individual who may set up shop in a City park without a license, lease, or other prior City authorization.

Even more telling is the Opera House's regular takeover of Heritage Plaza for Opening Night Galas, when over 300 cast, crew, and audience members gather for celebrations featuring food, beverages, and alcohol. According to my public records request, the City requires no special permit, license, or lease for these events. The Opera House simply emails the City's Commercial Services Department to inform them when events will take place.

The City Allows WOH to Operate Like a City Department

Most extraordinary is how the City allows WOH to treat public space as its own property. In an email dated January 31, 2025, a City Services Department employee reached out to the Opera House to ask for the dates WOH was planning to use Heritage Plaza in 2025—not to grant or

deny permission, but simply to coordinate the City's calendar around WOH's plans. The City doesn't typically ask "independent" groups when those groups will be taking over a City park; normally independent organizations must formally request permission and receive approval.

The Opera House's response reveals an attitude of entitlement that the City enables and accommodates. Executive Director Dr. Burmester informed the City that WOH plans Opening Night Receptions "on all of our regular shows" and needs "to settle on showcase/recital dates"—without providing complete dates and indicating he would get back to the City later. When he failed to follow up, it was the City employee who "circled back" four months later asking for the complete list of dates.

This exchange demonstrates that the City allows the Opera House to exercise the kind of control over public resources normally reserved for City departments—all of which are subject to the Brown Act. The Opera House's extensive use of Heritage Plaza as its outdoor venue, including monetizing the space by soliciting donations during events, shows an operational integration that contradicts any claim of independence.

To be clear, I am not criticizing the City's support of the performing arts—I admire the City's devotion to cultural programming and arts education. What I am criticizing is the City's demonstrably false claim that the Opera House operates as an entirely separate and independent entity not subject to the Brown Act. The ongoing spatial and operational integration, combined with coordinated legal strategies to avoid transparency, creates a fiction deliberately designed to shield WOH from the legally binding public scrutiny that the Brown Act requires.

A Simple Solution

I hope that this document and the research upon which it draws will convince the City of the importance and legal obligation of bringing the Woodland Opera House into compliance with the Brown Act. Beyond that, I hope that the City will embrace the practical benefits of this compliance. It will go a long way, I think, in persuading donors, many of whom have turned away from the Opera House in recent years, to return, trusting that their support of the beloved institution is not disappearing into a dim cave where only insiders can see what's going on. True, the Brown Act imposes certain requirements that can be hard to follow, but that is also a plus: Instead of having a nebulous "transparency" policy that is un- or ill-articulated, the Opera House will have clear, well-established guidelines to follow. It really is the right thing to do. Nevertheless, I'm not quite so naive as to think that my handful of pages will cause the City to see the light. Institutions are naturally cautious of change and intent, above all else, on self-preservation.

Conclusion and Request

I still hope that this case will not have to go to trial. The money that I would use to pursue it is my money, and I am willing to spend it on a cause in which I believe. The City, on the other hand, would be spending taxpayer money. How can the City justify that? What benefit or desirable outcome can the City tell the people of Woodland their money spent on legal fees is contributing to the community? Less transparency and public accountability for an organization

that receives enormous public resources? Telling folks that while Measure E heavily funded, as voters approved and intended, City Hall, the Library, and the Opera House, the first two are subject to open meetings laws but the last one isn't?

So let's not take this to court. Instead, please acknowledge, unless you truly believe that my argument is flawed, that it is right under the law to apply the Brown Act to the Woodland Opera House organization. Please do not delay any longer in complying with the law and getting WOH to comply with the law (preferably all of them, not just the Brown Act). Unlike so many situations in life, this can be a win-win. This community and this region take pride in the Opera House; let's make sure they can take pride too in how it is run and how the City values it not only with financial support but also by applying to it the law as the law should be applied.

Do the right thing. The rest doesn't matter.

—Marcus Aurelius, *Meditations*, 2nd century

Postscript to letter dated August 29, 2025, from M. Abergel to Messrs. Hiatt and Walsh

Just as I was finishing the enclosed report, Jia-Min Rosendale, President of the WOH Board of Trustees, reminded me to look at *The Brown Act: Open Meetings for Legislative Bodies (2003)* from the California Attorney General's office. Even though Ms. Rosendale espouses the City's anti-Brown Act position, she prompted me to look again at the Attorney General's specific guidance concerning nonprofits. From page 7 of the Attorney General's publication:

> The Act expressly applies to private corporations, limited liability companies and other entities that are created by the legislative body for the purpose of exercising authority which can be lawfully delegated to them. (§ 54952(c)(1); Epstein v. Hollywood Entertainment District II Business Improvement District (2000) 85 Cal.App.4th 152 [. . . .] Typically, the entities subject to this subdivision will be nonprofit corporations established jointly by various government entities for the purpose of constructing, operating or maintaining a public works project or public facility. (International Longshoremen's & Warehousemen's Union v. Los Angeles Expert Terminal, Inc. (1999) 69 Cal.App.4th 287, 294.)

This statement provides a useful and concise framework for examining the issue at hand.

The Attorney General writes,

1. "Typically the entities subject to this subdivision will be nonprofit corporations." Yes, WOH is typical here; WOH, Inc., was incorporated as a qualified nonprofit 501(c)(3) corporation by Articles of Incorporation in 1981.

2. "[E]stablished jointly by various government entities for the purpose of constructing, operating or maintaining." Yes, WOH, Inc., fits this definition. The language in the 1979 State-City Operating Agreement (with direct reference to the embryonic WOH nonprofit), as well as the 1981 Articles of Incorporation, closely parallels the Attorney General's language.
    a. "State understands that City intends to authorize" (1979) expresses a meaning quite similar to the AG's "established."
    b. "[A]uthorize the Woodland Opera House Board of Trustees to manage and operate" (1979) directly mirrors the AG's use of "operating" and one might construe "to manage" (1979) to include "maintaining" (AG) when the words both pertain to a historic building.

3. The AG's term "a public works project or public facility" applies perfectly to both the Opera House and the TADA Studio. Under the 1979 Agreement, the Opera House became a "subject property for inclusion in the State Parks System," "accessible and subject to the use and enjoyment of all," neatly fitting the definition of "public facility." Furthermore, in public documents, including Measure E materials distributed to voters, the City itself has referred to expenses at the Opera House and the TADA Annex as "public works."

4. In using the word "jointly," the AG refers us to *Epstein* (2001) and *Longshoremen* (1999), both of which establish that the City need only have "played a role in bringing [the entity] into existence"—a test the documentary evidence clearly supports. The 1979 Agreement's language of "this arrangement" to authorize the WOH nonprofit to "manage and operate" the Opera House "on the City's behalf" confirms that the City, with State authorization, both played a role in bringing WOH into existence and made joint "plans or preparations" (per Merriam-Webster's definition of "arrangement") for WOH's 1981 incorporation.

5. AG: "Exercising authority which can be lawfully delegated to them." WOH exercises governmental authority delegated by both entities. The 1979 Agreement explicitly states that WOH will manage and operate the Opera House "on the City's behalf," directly delegating municipal authority over a public facility. Additionally, WOH operates the TADA Studio not as an independent contractor but as a highly subsidized arm fulfilling the City's programming "priorities"—a clear exercise of delegated municipal authority over public cultural programming.

Thanks to Ms. Rosendale's reminder, we see how closely and tidily the Woodland Opera House, Inc., falls under the AG's definition of a nonprofit entity subject to the Brown Act. The Board President's reminder also made me realize that if the City of Woodland continues to resist subjecting WOH, Inc., to the Brown Act, and while guidance is sought, albeit slowly, from the courts, it may be worth turning to the State government for redress—both the State Parks system, as owner of the WOH State Historic Park, and the Attorney General's Office as chief regulator of nonprofit corporations. I am not sure what these offices would or could do, but the AG's handbook reminds one to consider them as an option.

Finally, Ms. Rosendale's email reminder included a link to the WOH website and the small number of Board-related documents now posted there. The only and most recent financial documents tell us that in the period June 2024 through May 2025, the Opera House *lost* $110,994.11. According to the minutes, the CFO tried to minimize the extent of the loss, but the basic message is clear even if the numbers are "overstated" or understated: An organization that showed a healthy profit in the past (see Forms 990 for 2021 and 2022) has been hemorrhaging cash for most of the new Executive Director's tenure there. And because the organization is not subject to the Brown Act, the extent and exact causes of that hemorrhaging remain opaque. Contrary to the spirit of the Brown Act and true transparency, Ms. Rosendale has not released the most recent financials and has announced that budget and financial documents discussed in a meeting will not be posted until they are "approved by the Board," with no timeline given.

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