CITY OF DAVIS
COMMISSION HANDBOOK

Davis
California

Updated January 2021

TABLE OF CONTENTS

INTRODUCTION

Over 150 citizens participate on boards, commissions and committees to assist and advise the City Council on various issues facing the Davis community. Boards, commissions, task forces and committees (referred to collectively as "city commissions") have a critical role in the city of Davis. As a commissioner, you serve as a conduit for citizen input – a way of gathering, analyzing and recommending options to the City Council, which has the final responsibility for making policy decisions. You will find your role requires time, effort, and sometimes lengthy meetings. However, it also provides an opportunity for you to participate in the decision-making process and help shape the future of Davis. The individuals who serve on the city's commissions are among the most respected and appreciated volunteers in the community.

The purpose of this handbook is to introduce you to your role as a commissioner by outlining accepted practices. While attempting not to be overly restrictive, procedures are established so that expectations and practices can be clearly articulated to guide commissioners in their actions. This handbook will:

- Outline the role and function of the City's boards/commissions/committees;
- Review important guidelines and expectations of appointed members;
- Provide information about the history and composition of the City organization; and
- Provide members with information necessary to understand areas of responsibility for their respective board, commission, or committee, and their role in serving the City.

This handbook provides a summary of important aspects of City government and commission activities. However, it cannot incorporate all material and information necessary for undertaking the business of commissions. Many other laws, plans and documents exist which bind the commissioners to certain courses of action and practices.

It is important that new members of commissions gain an understanding of the full range of services and programs provided by the city. For new members joining a commission, staff liaisons may provide an orientation and opportunities to tour facilities and provide background information on current issues facing the commission.

Here is a quick summary of how city commissions serve the democratic process in Davis:

- Hold public meetings and use other means to gauge the community's attitude about certain issues;
- Recommend policies and procedures related to their respective fields to the City Council;
- Serve as intermediary between the public, city staff and the City Council by providing information, explanation, and support for different points of view; and
- Make, in certain cases, decisions for the City. Some commissions have quasi-judicial powers, such as the Planning, Tree and Historical Resources Management Commissions, and can make decisions for the city. All such decisions are subject to appeal to the City Council.

CHAPTER 1
CITY OF DAVIS

BRIEF HISTORY

Though Davis dates its founding from the arrival of the railroad in 1868, the city was officially incorporated on March 28, 1917. Initially, the commission-form of government served the local population. The 1920s saw the installation of paved and lighted streets, sewage and water systems, and the development of local governance structures such as the establishment of the Mayor-Council form of government. In 1950, the first city administrator was appointed, and in 1965, the position of City Manager was instituted.

The University became a general campus of the University of California system in 1962. The following decades witnessed a large population and construction boom, reflective of trends observable in many other parts of California. Ultimately however, a more growth-conscious attitude took hold, contributing to the Davis' reputation as a community highly concerned with finding a balance between environmental considerations and growth.

The Planning Commission was established in 1925, and the city's first General Plan was adopted in March 1927. The current General Plan was adopted in 2001 and has been amended through 2016. The City Council has directed staff to begin another General Plan Update to begin in earnest in 2019/2020, once a Core Area Specific Plan (Downtown Plan) is underway to create a 2040 Vision for Downtown Davis.

Today the City of Davis is a university-oriented city of over 67,000 residents. Specific planning decisions made in years past have led to the development of a city widely considered to be one of the most bike-friendly in the country. As the City moves forward, the close relationships between students and city residents will surely continue to strengthen the close college-town community that has arisen over the past 150 years.

CITY GOVERNMENT

Davis uses a Council-Manager form of government. The City Council serves as the legislative body, sets policies and procedures, and represents the citizens of Davis. The City Council appoints the City Manager to carry out the Council's direction and act as the chief administrative officer for the city.

City Council

The Davis City Council, the governing body of the city, is made up of five council members who are elected in a non-partisan election and serve "by-district" representing one of five city districts. The City Council is accountable to the citizens it serves. Council elections occur with the state general election in November of even calendar years. Council members serve four-year terms. Three council members are elected in one election and two council members in the next election.

The selection of mayor and vice considers criteria such as seniority on the City Council, consensus building skills, experience presiding over legislative bodies, and other factors that promote good governance practices. In light of the transition to District Elections, the current mayor will serve a two year term ending in July of 2022. The next mayor selected will serve a term of one-and-a-half years, through December of 2023. Subsequent mayors will serve one-year terms from January through December each year, beginning in 2024. Vice mayors will serve a one-year term.

The City Council formulates policy, approves programs, appropriates funds and establishes local taxes and assessments, as well as enacts local laws (ordinances) and regulations for governing the City. The City Council reaches decisions by a majority vote. The local ordinances adopted by the City Council are compiled in the municipal code. Other City Council directives and policies are recorded in resolutions or council minutes.

The Davis City Council usually meets on Tuesday evenings at 6:30 p.m. in the Community Chambers at City Hall. Copies of the agenda are available 72 hours before the meetings at the City Clerk's office, posted at City Hall and online. City Council agendas may be emailed to individuals by subscription. City Council and commission agendas with staff reports attached can be viewed on the city web page (http://cityofdavis.org).

The City Council also serves as the Successor Agency to the former Redevelopment Agency and as the City's Public Facilities Financing Authority.

City Manager
The City Manager is the chief executive officer and the head of the administrative branch of the city government. The City Manager implements policies and procedures initiated by the City Council, prepares and administers the municipal budget, advises the Council of future financial needs of the city, initiates and supervises business relationships, and directs the daily operations of city government. The City Manager is responsible for all city personnel, except the City Attorney. The City Manager's Office (Department) is primary staff for the Human Relations Commission, Civic Arts Commission, Police Accountability Commission, and Social Services Commission.

City Clerk
The City Clerk is a position hired by the City Manager and responsible for the recording, writing and maintaining the records of City Council proceedings. The City Clerk conducts municipal elections through coordination with County of Yolo Elections Office. The Clerk stores and indexes official documents and city records for retrieval, administers Statements of Economic Interest disclosures and Campaign Statements filed under the Political Reform Act, and is the custodian of the seal of the city.

City Attorney
The City Attorney is appointed by the City Council. The City Attorney advises the City Council and city officers (in their official capacity) in legal matters, attends all Council meetings and represents the city in legal actions and proceedings. The City Attorney and members of the City Attorney's office maintain an attorney-client relationship with the city, its officers, agents and employees, so their official communications are protected as confidential attorney-client privilege. The City Attorney rarely attends commission meetings but may provide counsel to staff when legal issues arise on commission matters.

Community Development and Sustainability Department
The Community Development and Sustainability Department is responsible for (1) researching, analyzing and recommending proposed general and specific plans, ordinances, codes and guidelines; (2) reviewing and making recommendations on proposed development projects; (3) ensuring that approved project plans are consistent with city policies; (4) inspecting all residential, commercial and industrial building construction to ensure compliance with applicable codes; and (5) reviewing historical resource designations and design review. The Community Development and Sustainability Department serves as primary staff to the Historical Resources Management Commission, Natural Resources Commission, Open Space and Habitat Commission, and Planning Commission.

Administrative Services Department
The Administrative Services Department has three divisions:

> **Human Resources Division:** The Human Resources Division is responsible for the direction and coordination of filling vacant positions, administering employee benefits, facilitating all labor negotiations, citywide training programs and risk management. The Human Resources Division staffs the Personnel Board.
>
> **Information Services Division:** The Information Services Division maintains the city's network, is responsible for the city's hardware and software, provides internal computing resources, and maintains the city's web site and GIS systems.
>
> **Finance Division:** The Finance Division houses the Finance Administrator as the City's controller, auditor and treasurer. Finance is responsible for developing and maintaining the annual city budget and for providing all business services related to the city organization. The Finance Division staffs the Finance and Budget Commission.

Fire Department
The Fire Department is responsible to ensure that the community's emergency resources and prevention services are effectively and efficiently delivered and managed. The Fire Department provides emergency services, which include pre-hospital emergency services at the EMT-1D level (defibrillation); response to structural, vehicular and vegetation fires, hazardous materials response, water rescue, public assistance and other emergencies. The prevention services provided include fire and life safety inspections, plan review services; public education on fire safety and fire prevention; fire investigations and a youth fire diversion program. The training division trains and prepares the firefighters to respond to a wide diversity of emergency incidents.

The department has shared services agreements for a boundary drop with UC Davis and a training services and program management agreement with the West Valley Regional Fire Training Consortium. The Fire Department has three contracts to provide emergency services: East Davis County Fire Protection District, Springlake Fire Protection District and No Mans Land Fire Protection District. Each of these districts has a board of commissioners who report to the Yolo County Board of Supervisors.

Parks and Community Services Department
This department is responsible for operating and maintaining a variety of services and facilities related to recreation including design and maintenance of various parks, greenbelts and street trees; staffing and operation of community buildings and swim complexes; administering programs for senior citizens and individuals with disabilities; and providing a variety of general services to other departments. The Parks and Community Services Department provides primary staff for the Recreation and Park Commission, Senior Citizens Commission, and Tree Commission.

Police Department
This department is responsible for carrying out law enforcement and the protection of life and property. The Police Department also acts as a public safety dispatch center for all emergency calls for police, fire and ambulance services in Davis. In addition, the Police Department issues dog licenses, dance permits, noise permits, parade permits, parking permits and security clearances.

Public Works Engineering & Transportation Department
The Public Works Engineering & Transportation Department is responsible for implementation of the City's capital improvement program (CIP), as well as processing and inspection of public infrastructure improvements in subdivisions. Staff also provide transportation planning, traffic engineering, bicycle and pedestrian programs, maintenance of city-wide maps, and floodplain ordinance management. Public Works Engineering & Transportation Department staffs the Bicycling, Transportation, and Street Safety Commission and the Unitrans Advisory Committee.

Public Works Utilities & Operations Department
The Public Works Utilities and Operations Department is responsible for the operation and maintenance of the street and utility systems (water, wastewater and stormwater), including signals and streetlights, City fleet and building maintenance, environmental quality regulations and permitting, as well as administration of the solid waste collection service agreement with the City's franchise waste hauler. Public Works Utilities and Operations Department staffs the Utilities Commission.

City Documents Relevant to Commissions

Commission Enabling Resolutions
The City Council has adopted a resolution of formation and operation for each commission, outlining the commission's purpose, scope of responsibility, membership structure, and terms of office. Staff liaisons and commissions should periodically review their enabling resolutions to ensure that matters on their agendas are within their assigned subject matter jurisdiction.

Commission Work Plan
The Commission shall maintain a work plan of clearly defined long- and short-term objectives. These objectives should be reflective of current City Council Goals relating to the commission's subject matter jurisdiction. The City Council may review commission work plans during its Council Goal setting sessions. Commission work plans and long range calendars are intended to provide City Council with an overview of commission activities and focus areas in order to consider their alignment with Council Goals. A sample commission work plan can be found as Appendix A.

City Council Goals
Each Council sets goals and objectives for a two-year period, usually following Council elections. From these goals and objectives come specific tasks, which are then included as part of staff and commission work plans for those two years. Tasks listed in the Council Goals do not cover every activity of city programs or staff but rather just those actions that are new, strategic in nature, ongoing, or in some cases higher in priority. Most tasks have a point or points of contact; and some have a timeline in which they expect to be completed. Commissions are expected to frame their work plans around the goals and objectives as adopted by each Council, while continuing routine duties that may not be included in the goal document.

Davis Municipal Code
The Davis Municipal Code ("DMC") constitutes a codification of the administrative, criminal and regulatory ordinances of the City of Davis, as adopted by the City Council. Each section of the code contains substantive ordinance language. The code is organized to make the laws of the city as accessible as possible to city officials, city employees and private citizens. Provisions in the DMC are enforced by the Code Enforcement division of the Police Department and, in some cases, may be further enforced by staff in other departments. An online version of the DMC is available on the city's website, and a hard copy is available to view in the City Clerk's Office.

Davis General Plan
The City of Davis' General Plan is the primary guide to policies and actions regarding the City's growth. The general plan articulates a community's vision of its long-term physical form and development. General plans are prepared under a mandate from the State of California, which requires that each city and county prepare and adopt a comprehensive, long-term general plan for its jurisdiction and any adjacent related lands. The general plan serves as a basis for decision-making. The plan directs decision-makers, who must balance competing community objectives, which at times may present trade-offs that the commission, and ultimately City Council, must thoroughly consider.

City Budget

The Budget is the primary policy document adopted by the City Council that establishes the service levels and capital projects to be provided to the community by its city government. It establishes the financial and human resources devoted to accomplishing community goals and objectives as reflected by the City Council. It provides a logical structure to organize its various programs, projects and other expenses. It provides a system for control of its revenues and expenses. Some, though not all, commissions may need to refer to the Budget documents when making decisions and recommendations to Council which may have fiscal impact on the City. Staff liaisons should be proactive in assisting commissions on matters of this nature.

Other Adopted Policies/Guidelines

Staff Liaisons may ask that commissioners be familiar with and from time to time make recommendations on adjustments to city policies and procedures and other City documents which fall under the commission's scope. Documents include, but may not be limited to:

- Annual City Financial Statements (FBC)
- Aquatics Assessment Report (RPC)
- Beyond Platinum: Bicycle Action Plan (BTSSC)
- Building and Park Facilities Assessment (FBC/RPC)
- Climate Action and Adaptation Plan (NRC)
- Consolidated Action Plan Submitted to the U.S. Department of Housing and Urban Development (SSC)
- Davis Downtown Traditional Residential Neighborhood Guidelines (HRMC/PC)
- Davis Register of Historical Resources (HRMC)
- Financial Forecasting Model (FBC)
- Guidelines for Housing that Serves Seniors and Persons with Disabilities (SCC)
- Manual on Uniform Traffic Control Devices (BTSSC)
- Open Space Acquisition and Management Plan (OSHC)
- Parks and Recreation Facilities Master Plan (RPC)
- Police Department Strategic Plan (PAC)
- Street Pavement Needs Report (BTSSC/FBC)
- Transportation Implementation Plan (BTSSC)
- Transportation Systems Design Standards (BTSSC)
- Walk / Bike Audit Report (BTSSC)
- Zero Waste Plan (NRC)

City Commissions

The City of Davis currently has seventeen advisory groups categorized as boards, committees, and commissions. The City Council may also appoint task forces for specific issues and determined lengths of time. Each advisory body has a specific focus and serves to make recommendations to the City Council on issues related to that specific field. City Council may also decide to appoint ex-officio members without voting privileges as they deem necessary. The following is a list of all City commissions, a full description of each can be found in the pages toward the end of this chapter:

- Bicycling, Transportation, and Street Safety Commission
- Civic Arts Commission
- Finance and Budget Commission
- Historical Resources Management Commission
- Human Relations Commission
- Natural Resources Commission
- Open Space and Habitat Commission
- Planning Commission
- Police Accountability Commission
- Recreation and Park Commission
- Senior Citizen Commission
- Social Services Commission
- Tree Commission
- Utilities Commission

Boards / Committees / Task Forces

From time to time, the City Council creates city committees and task forces to look at specific issues. These committees and task forces are governed by the same rules and regulations as commission; however, their membership structure will vary and their scope and duration are limited. In addition, the city participates on boards, commissions and committees that have been established by regional agencies or organizations to discuss issues involving the county, schools, local businesses, etc. The following describes a few of the City's on-going committees/boards; for a complete list of the City of Davis' committee/agency memberships, contact the City Clerk's Office:

Personnel Board

The function of the Personnel Board is to provide advice to the City Council and the City Manager through objective decisions concerning personnel issues to help ensure fair and equitable conditions of employment. The board hears appeals submitted by city employees involving disciplinary action, dismissal, and/or demotion, and certifies its findings and recommendations as provided in the personnel system rules. The board, when requested by the City Council or City Manager, shall investigate and make recommendations on any matter of personnel policy. The board also reviews the city's workforce statistics.

Unitrans Advisory Committee

The Unitrans Advisory Committee holds public meetings review any proposed Unitrans route, schedule, and fare changes, and addresses Unitrans issues brought forward by residents. Members are on-call to convene if a special issue arises.

Bicycling, Transportation, and Street Safety Commission (BTSSC)

Purpose

The Bicycling, Transportation, and Street Safety Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to transportation.

Roles and Responsibilities

- Advise the City Council and staff on matters relating to transportation programs, capital projects, and planning efforts, including: transportation policy; transit, bicycle, pedestrian, and vehicular planning; street design; traffic operations and enforcement; traffic safety; parking; and transportation infrastructure maintenance.
- Consider all transportation modes in its recommendations, with an orientation toward active transportation modes and overall traffic safety and circulation.
- Monitor and facilitate implementation of the General Plan Transportation Element, Transportation Plan, Beyond Platinum - Bicycle Action Plan, and Downtown Parking Management Plan amongst others.
- Serve as a focal point for the community and City government on transportation matters, projects, and issues.
- The Commission shall report annually to the City Council its findings, recommendations and activities, or with greater frequency where the Council, Commission, or City staff deems necessary.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Second Thursdays (monthly) at 5:30 p.m
Davis Senior Center Valente Room
(646 A Street)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning/termination of membership).

References

Resolution No. 14-033 (2014)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limit:	8 successive years (exceptional circumstances may apply)

Civic Arts Commission (CAC)

Purpose

The Civic Arts Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to City arts programs and facilities.

Roles and Responsibilities

- Develop and encourage programs for the cultural enrichment of the city.
- Coordinate and strengthen existing organizations in the cultural arts field.
- Propose methods to encourage private initiative in the arts and culture.
- Advise and consult with local, state and federal individuals/organizations in obtaining experience in and/or knowledge of resources available in the fields of culture and the arts.
- Formulate review and recommend:
  - Guidelines for the acquisition of all works of art by the city (purchased, gifted or otherwise). Review and make recommendations as needed for pieces to be acquired and their proposed locations.
  - Guidelines for arts contract programs that support community art programming projects and make annual funding recommendations to the City Council.
  - Programs and methods to encourage creative activities to the highest standards, and increase public understanding, appreciation and enjoyment of cultural activities and all forms of art
  - Policies to guide the review and recommendations related to the removal, relocation or alteration to any existing works of art in the possession of the city.
- Work with UC Davis in: (1) developing and carrying out joint projects; (2) collaborate with UC Davis arts professionals in other areas of mutual interest; and (3) maintain ongoing dialogue to promote substantive communication and cooperation in visual and performing arts.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Second Mondays (monthly) at 4:00 p.m. Does not normally meet in August.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning/termination of membership).

References

Resolution No. 06-177 (2006)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Finance and Budget Commission (FBC)

Purpose

The Finance and Budget Commission is appointed by and acts as an advisory body to the City Council and staff on matters relating to city finances and focuses on an independent analysis of technical, financial and budgeting issues.

Roles and Responsibilities

- Providing transparency of City Finances to the citizens of Davis.
- Reviewing the spending outlined in the city budget in order to advise the Public that City Council/City Management is accountable for spending taxpayer dollars effectively and in keeping with important city priorities.
- Searching for and advising actions that could maximize city revenues and reduce governmental costs and help ensure municipal fiscal stability.
- Providing recommendations/special studies on financial and economic issues to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Second Mondays (monthly) at 6:30 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 14-175 (2014)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Historical Resources Management Commission (HRMC)

Purpose

The Historical Resources Management Commission is appointed by and acts as an advisory body to the City Council on all matters pertaining to historical resources.

Roles and Responsibilities

- Act in an advisory capacity to the city council in all matters pertaining to all types of designated historical resources;
- Maintain a local cultural resources inventory of all types of historical resources within the city; publicize and periodically update the inventory;
- Work with city staff and the State Historic Preservation Office to administer the Certified Local Government program;
- Recommend standards to be adopted by the city council, to be used by the commission in the review of applications for certificate of appropriateness;
- Hear and render judgment and approve/deny applications for certificates of appropriateness and demolition certificates.
- Review new construction, significant exterior renovations, and demolitions within the boundaries of designated historic districts;
- Perform advisory review of new construction, significant renovation projects, and demolitions within three hundred feet of designated individual landmarks and merit resources and within adopted conservation overlay districts;
- Work with city staff and outside consultants as needed to develop policy documents for historic and conservation districts;
- Investigate and report to the city council on the use of various federal, state, local, or private funding sources, incentives and other mechanisms available to promote historical preservation in the city;
- Review and comment on the decisions and documents including environmental assessments under the California Environmental Quality Act, the National Environmental Policy Act, Section 106 of the National Historic Preservation Act, environmental impact reports, and environmental impact statements of other public agencies and private projects when such decisions or documents may affect any type of designated historical resources or potential historical resources in the city;
- Cooperate with local, county, state, and federal governments in the pursuit of the objectives of historic preservation
- Participate in, promote, and conduct public information, educational, and interpretive programs pertaining to all types of historical resources;
- Render advice and guidance upon the request of the property owner or occupant, on the restoration, alteration, decoration, landscaping, or maintenance of any designated historical resource;

- Provide for adequate public participation in local historic preservation programs, including the process of recommending properties for nomination to the National Register of Historic Places and the California Register of Historical Resources;
- Has authority to delegate certain minor projects to commission staff for any advisory review and for certificate of appropriateness review, approval or denial. The historical resources management commission shall establish guidelines for such projects to be reviewed by commission staff.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership
7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings
Third Mondays (monthly) at 7:00 p.m. Meetings in January and February are held on the fourth Monday.
Davis Senior Center Activity Room (646 A Street)

Conflict Disclosure
Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References
Davis Municipal Code Article 40.23

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Human Relations Commission (HRC)

Purpose

The Human Relations Commission is appointed by and acts as an advisory body to the City Council on matters regarding the development and promotion of positive human relations, mutual respect, understanding and tolerance among all persons throughout the community.

Roles and Responsibilities

- Advocate and encourage educational and other appropriate activities to seek to discourage or prevent discrimination and prejudice and/or to promote diversity, equality and justice. This function can be addressed by holding conferences and other public meetings, engaging in educational campaigns, partnering with other organizations to develop outreach information and programs, and other methods determined to be appropriate. Specific activities for which the Commission is responsible include the city of Davis Martin Luther King Jr. Day event, the city of Davis Cesar Chavez event and the city of Davis Thong Hy Huynh Awards.
- Recommend publications and reports as may address issues of discrimination, diversity, prejudice or other matters related to community principles or anti-discrimination.
- Recommend programs and activities to:
  - Encourage minority- and woman-owned businesses in Davis;
  - Prevent discrimination against groups and individuals to ensure public peace, health, safety and general welfare for all residents of Davis; as well as take other necessary actions, as directed by Council, to prevent discrimination against groups and individuals to ensure that all members of the Davis community will be treated equally and fairly.
- Study and make recommendations regarding problems in the city which arise from alleged discrimination prohibited by state and federal law or local statutes and report such information to the City Council.
- Refer individuals presenting specific grievances or complaints to the appropriate agency, official or process where such concerns are most appropriately addressed. It is not the intent for the Commission to attempt to adjudicate individual grievances.
- Listen to and gather information from individuals who feel they have been discriminated against so that information may be used to address broader community needs.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

6 ex-officio members representing the following: faith-based organization, high school student, ASUCD, Police Department, UC Davis, DJUSD

Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)

Meetings

Fourth Thursdays (monthly) at 6:30 p.m. November and December meets are held on alternate dates due to observed holidays.
Davis Senior Center Valente Room (646 A Street)

Conflict Disclosure

None required.

References

Resolution No. 07-125 (2007)

Natural Resources Commission (NRC)

Purpose

The Natural Resources Commission is appointed by and acts as an advisory body to the City Council to provide recommendations on natural resource issues facing the City– including water conservation, air pollution, waste management, recycling and hazardous waste.

Roles and Responsibilities

- Advise the City Council on the preservation, management and enhancement of the city's natural resources.
- Review and make recommendations to the City Council relating to maintaining the quality and quantity of the city's water supply and wastewater treatment processes, and promoting water conservation.
- Review and make recommendations to the City Council pertaining to the degradation of air quality in the Yolo-Solano-Sacramento region.
- Review and recommend to the City Council ways to implement the Yolo County Solid Waste Plan and improve city-wide recycling efforts.
- Advise the City Council on ways to promote the use of renewable sources of energy.
- Advise the City Council on environmental matters relating to global warming, and toxic and hazardous substances.
- Report to the City Council recommendations for legislation and other actions that would limit actual or potential threats to the natural resources of the city.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Fourth Mondays (monthly) at 6:30 p.m. Does not normally meet in August or December.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 07-041 (2007)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Open Space and Habitat Commission (OSHC)

Purpose

The Open Space and Habitat Commission is appointed by and acts as an advisory body to the City Council on all open space issues, programs and projects including those dealing with the habitat.

Roles and Responsibilities

- Areas that can be included are issues related to natural areas, wildlife and wildlife habitat, agricultural land conservation, land acquisition, regional parks, trail systems, environmental education and interpretation, project site design and project operations and maintenance.
- Monitoring the implementation of the city's open space objectives and identifying solutions to implementation problems.
- Serve as the focal point for the community and city government for open space projects and issues. Work cooperatively with the Recreation and Parks Commission, Planning Commission, and other city and community groups on issues of mutual interest.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

First Mondays (monthly) at 6:30 p.m.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 06-182 (2006)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Planning Commission
(PC)

Purpose

Pursuant to Government Code 65100 et seq., the Planning Commission is appointed by and acts as an advisory body to the City Council on matters relating to zoning regulations such as final planned developments, use permits, variances, zoning interpretations and ordinance amendments, and also serves as the advisory agency to hear subdivision matters.

Roles and Responsibilities

- Serve as the agency to hear matters relating to zoning regulations arising from either chapter 4 of title 7 of the Government Code, or the zoning code of the city, or both (i.e., annexations, prezonings, rezonings, development agreements, final planned developments, use permits, variances, zoning interpretations and ordinance amendments).
- Serve as the agency to hear subdivision matters.
- Serve as the agency to hear general plan amendment applications that also request zoning or subdivision approvals.
- Develop and maintain a general plan and such specific plans as may be necessary or desirable. Review and make recommendations to the City Council on amendments to the general and specific plans.
- Determine the consistency of any project with the general plan using the criteria approved by the City Council.
- Make general plan findings on development applications.
- Investigate and report to the City Council regarding means of implementing the general plan.
- Consult with and advise public officials and agencies, public utility companies, civic, educational and other professional organizations and citizens, generally, regarding implementation of the general plan and specific plans.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide, in addition to any Council goals related to, among other things, the review, revision and implementation of the general plan, preparation and completion of studies, or coordination with other public agencies.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Second and Fourth Wednesdays (monthly) at 7:00 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Term

Regular member: 4-year term
Alternate member: 2-year term
Term Limits: 8 successive years (exceptional circumstances may apply)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office and the California Fair Political Practices Commission (annually and upon beginning and termination of membership).

References

Resolution No. 07-043 (2007)

Police Accountability Commission (PAC)

Purpose

The Police Accountability Commission provides community-based accountability via interactions with members of the public, the Independent Police Auditor, the Davis Police Department, and others. The PAC, along with the Independent Police Auditor, is a critical means to create more accountability and transparency in policing. The PAC will listen to, amplify, and build common ground among community members affected by policing in Davis. They will champion practices centered on justice and equity. The vision is for the community and police to be aligned in shared goals of safety, respect and accountability.

Roles and Responsibilities

1. Develop Community Outreach Plan
   - Develop and execute a community outreach plan with input from the Independent Police Auditor.
   - Develop and share information regarding various methods for community members to submit Davis Police Department complaints.
   - Identify improvements to the community complaint processes and assist with outreach.
   - Hold regularly-scheduled meetings and provide notice and an opportunity for community input. These meetings should be coordinated with various non-profit and/or faith-based groups to assure under-represented or vulnerable groups have a safe space to fully participate. All meetings will be open to the public.
   - Refer complainants to Independent Police Auditor or Davis Police Department,
   - Collect public information from public comments/issues with Davis Police Department during regular meetings and share with City Council annually,
   - Review and analyze public data provided by local law enforcement and share with public during outreach and regular meetings.

2. Provide Input to Audit Davis Police Department Policies, Procedures, and Training
   - Identify, prioritize and coordinate with the Independent Police Auditor on topics for Independent Police Auditor auditing. The Independent Police Auditor will conduct the audits but the Davis Police Accountability Commission will provide input and recommendations on prioritization of audits and receive results of audits when completed.
   - Review and provide input to the City Council on the surveillance technology ordinance.

3. Recommend Changes/Improvements to Policy, Procedure, or Training
   - With Independent Police Auditor input, systematically provide input to new policies, procedures, and training; and review and analyze existing Davis Police Department policies, procedures and training.
   - Provide input to the City Council on recommendations for improvements to Davis Police Department policy, procedure, and training.

4. Review Independent Police Auditor Reports on Misconduct Complaints
   - Receive Independent Police Auditor reports on misconduct complaints
   - Recommend, for the Independent Police Auditor's or the City Council's consideration, further analysis of complaints or the complaint process.
   - Work with the Independent Police Auditor and Davis Police Department to promote ACR (Alternative Conflict Resolution)/mediation as a complaint resolution option.

5. Assess the Independent Police Auditor's work with the PAC
   - Provide annual written input to the City Manager and the City Council on the effectiveness of the Independent Police Auditor.

6. When time permits, respond to Davis Police Department and/or City Council requests for input on matters outside Independent Police Auditor/Commission priorities, such as commenting on new law enforcement programs or acquisitions.

Membership
9 regular members and 1 alternate.
A quorum shall consist of 5 voting members.

Meetings
First Monday (monthly) at 6:30 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Conflict Disclosure
None required.

References
Resolution No. 20-181 (2020)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Recreation and Park Commission (RPC)

Purpose

The Recreation and Park Commission is appointed by and acts as an advisory body to the City Council on matters pertaining to public recreation and parks .

Roles and Responsibilities

- Advise the City Council on matters pertaining to public recreation and park planning.
- Review the annual budgets for park and recreation programs.
- Provide recommendations on public art projects as it relates to the park design or theme of a park.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

2 student ex-officio members: 1 Davis High School student elected by the student body and 1 UC Davis student appointed by the ASUCD President

Meetings

Third Wednesdays (monthly) at 6:30 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Conflict Disclosure

None required.

References

Resolution No. 07-039 (2007)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Senior Citizen Commission (SCC)

Purpose
The Senior Citizen Commission is appointed by and acts as an advisory body to the City Council on matters affecting the aging in the community.

Roles and Responsibilities

- Identify the needs of the aging of the community and create a citizen awareness program for these needs.
- Exploring improved standards of services to the aging and exploring new services for the aging both in private and public sectors.
- Advising the City Council on matters related to policy and regulations relevant to senior citizens.
- Other duties as the Council may, from time to time, decide.

Membership
7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

1 commission member shall be appointed to serve as a voting member on each of the following:

- City of Davis Unitrans Advisory Committee
- Yolo County Commission on Aging and Adult Services

Meetings
Second Thursdays (monthly) at 2:30 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Conflict Disclosure
None required.

References
Resolution No. 17-062 (2017)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Social Services Commission (SSC)

Purpose

The Social Services Commission is appointed by and acts as an advisory body to the City Council on matters relating to the health, safety and general welfare of the citizens.

Roles and Responsibilities

- Advise the City Council on all matters relating to issues of social services which affect the citizens of Davis, including but not limited to the issues of social services in health, affordable housing, homelessness, hunger, transit, child care, elder adult services, accessibility and low income needs.
- Serve, at the request of the City Council, as a community forum for education, discussion and debate around the issues of social services.
- Hold public hearings and community forums on issues which fall within its charge, and call appropriate witnesses to provide pertinent information.
- Serve, at the request of the City Council, as a liaison between community groups organizing around issues of social services, and city government.
- Coordinate the efforts of the City of Davis in recognition of volunteers and document the value of volunteer contributions to the City.
- Advise the City Council on Community Development Block Grant, Home Investment Partnership Program and other social services-related Federal and State grant programs.
- Coordinate with other city commissions on matters of mutual interest.
- Other duties as the Council may, from time to time, decide.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Third Mondays (monthly) at 7:00 p.m.
Community Chambers at City Hall
(23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

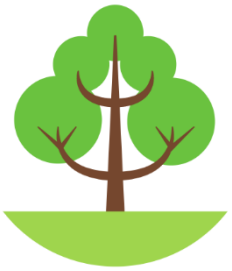
References

Resolution No. 12-072 (2012)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Tree Commission
(TC)



Purpose
The Tree Commission is appointed by and acts as an advisory body to the City Council on tree related matters, including review and approval of tree removal requests.

Roles and Responsibilities

- Review and approve or deny tree removal requests.
- Hear appeals from decisions of the park and ground superintendent regarding public nuisances.
- Hear appeals regarding denials of tree modification permit applications.
- Review and make recommendations to the City Council regarding declaring a tree as a Landmark Tree.
- Review and make recommendation regarding requests for the removal of a Landmark Tree designation.
- Has quasi-judicial authority to make certain binding decisions under its subject matter jurisdiction. Aggrieved parties have the right to appeal decisions of the commission to the City Council.
- Other duties as the Council may, from time to time, decide.

Membership
7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings
Third Thursdays (monthly) at 5:30 p.m.
1818 Administrative Building A
(1818 Fifth Street)

Conflict Disclosure
Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References
Resolution No. 06-187 (2006)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

Utilities Commission
(UC)

Purpose

The Utilities Commission is appointed by and acts as an advisory body to the City Council on the City's utility rates, assumptions and programs, and related utility matters as directed by the City Council.

Roles and Responsibilities

- Recommend rate setting principles and reserve policies for Davis utilities; annual or multi-year adjustments to the City's utility rates; and technologies, pilot programs and initiatives for City Council consideration and potential staff evaluation.
- Consider applicable City goals and policies and incorporate them into utility policies; costs associated with providing utility services; utility customer needs and satisfaction with utility services; short and long term factors and consequences identified in rate studies; information provided by city utility managers, the City Council, and City advisory commissions, especially the Natural Resource Commission (NRC) and Finance and Budget Commission (FBC); current and potential future state regulations and policies, industry experience and best practices.
- Evaluate and compare options to improve utility service and/or change the scope and methods of service delivery; social and economic equity effects of utility service and rate options on different segments of the Davis community; utility rates and rate structures of other communities to assist with informing policies for Davis; and long-term strategies to achieve service value and efficiency, resiliency, environmental sustainability, and other City objectives.

Membership

7 regular members and 1 alternate.
A quorum shall consist of 4 voting members.

Meetings

Third Wednesdays (monthly) at 5:30 p.m.
Community Chambers Conference Room at City Hall (23 Russell Boulevard)

Conflict Disclosure

Members are required to complete and file Statement of Economic Interests Form 700s with the City Clerk's Office (annually and upon beginning and termination of membership).

References

Resolution No. 19-121 (2019)

Term

Regular member:	4-year term
Alternate member:	2-year term
Term Limits:	8 successive years (exceptional circumstances may apply)

CHAPTER 2
SERVING ON A COMMISSION

MEMBERSHIP

Application/ Selection Process

Application

Anyone 18 years of age or older, who resides within the Davis Joint Unified School District area and/or owns a business in Davis, may apply to serve on a City commission. Individuals employed by the City of Davis may not serve on a City commission.

Applications are available at City Hall during normal business hours and available online. Applications are generally accepted on a rolling basis, with exceptions for scheduled recruitment periods during which an application deadline is established. Regular commission appointments occur on a biennial basis, with approximately 2-month recruitment periods. The City of Davis will advertise all recruitments in the local newspaper, city website, and other media.

Applications are kept on file for a period of two years from the date submitted. On-file applicants will be contacted as vacancies occur to ensure their continued interest in serving on a commission.

Appointments

The City Council has appointed a Subcommittee on Commissions to help facilitate the applicant selection process. The Subcommittee will hold a brief 10-15 minute interview with each applicant. Individuals seeking appointment who have already participated in the interview process generally will not need to be re-interviewed, unless the Subcommittee requests otherwise.

After interviews are completed, the Subcommittee will forward their applicant recommendations, along with all applications and supporting materials, to the full City Council for appointment at a regularly noticed public meeting. Applicants will receive notice of the meeting date/time before appointments are made. Each Council member will vote to appoint applicants, and they may or may not vote in favor of the Subcommittee's recommendations. It requires a majority vote of the Council to appoint a commission member. Following Council appointment, applicants will be notified of Council action and if appointed, receive orientation materials.

Moving from one commission to another

Individuals may apply to be appointed to another commission vacancy while actively serving, but if appointed, would automatically relinquish the position on the first commission. There does not have to be a break in service to be eligible to move from one commission to another.

Volunteer Role

Compensation

Commission members are dedicated community members who freely volunteer their services and time to serve on a City of Davis advisory body. Members shall receive no compensation for the performance of their official duties unless compensation is expressly provided by the City Council.

Training/Conferences

City-sponsored training invitations may be offered to members of the commission. As training opportunities arise, commission members are encouraged, and in some cases expected, to participate whenever possible. Some trainings may be mandatory to maintain active status for certain advisory bodies. At times, non-City-sponsored trainings or conferences may be offered to members of certain advisory bodies.

Commission members may request to receive expert training workshops or hold community forums on specific topics pertaining to the commission's function/scope. Staff may determine whether resources are available for these events and the best course of action to fulfill them.

Oath of Office

The Oath of Office is the standard oath set out in the California State Constitution and is required for all elected and appointed officials in California, as well as all city employees. Oaths may be completed during a swearing in ceremony upon your first commission meeting, or the first meeting with your staff liaison, whichever is sooner. Failure to take the Oath of Office within 30 days of the start of your term shall be cause for termination of membership.

Terms of Office

Term of office on most commissions for regular members is four years, although all commissioners serve at the pleasure of the City Council. The term of office for alternate members is two years. There are exceptions such as the Personnel Board or other committees/task forces whose members are selected for their expertise or are representatives from other agencies. The terms of commissioners are staggered to provide continuity to the commissions. The term length for each seat is fixed; if a seat is vacated before the end of the term, the new member will serve the remainder of the current term.

Reappointment Policy

The City Council has adopted a general term limitation for members on any board or commission of eight successive years or two full terms. Any board or commission member having served eight successive years may be re-appointed based on exceptional circumstances. Exceptional circumstances may include, but not be limited to, the incumbent's special expertise, the need to preserve continuity on the board and commission, or a lack of other qualified applicants. It should be noted that the City Council will take attendance records and term limits into consideration when evaluating re-appointment of commission members. Members who have termed out for a commission must wait one year before re-applying for that same commission. However, individuals may be appointed to a different commission.

Attendance

Regular attendance at commission meetings is of utmost importance to your role as a commissioner. Failure to comply with the attendance rules and other requirements as outlined in this section can result in automatic termination of your membership. All commissions, regardless of the frequency of meetings, are subject to these attendance requirements. A member must be present for at least 50% of the entire meeting to be counted as present for purposes of attendance. The City does not allow teleconferencing at commission meetings in order to avoid an absence.

Absence from three consecutive meetings.

Absence from three consecutive regular meetings of the body will result in removal from the commission. If a member has been absent from two consecutive regular meetings, the staff liaison should advise the member that non-attendance at the next meeting will negatively impact their membership. Upon the third consecutive absence, the staff liaison shall report the absence to the City Clerk's Office for immediate action.

Reporting absences

The staff liaison to each commission shall report the full attendance record of each member to the City Clerk on an annual basis. Absence from 1/3 or more of all regular meetings held within the reporting period will result in termination of membership.

Excused Absences/Leaves of Absence

Absences may be excusable due to one of the following reasons:

- Conflict between a scheduled commission meeting and a religious or cultural holiday. Written notice of this conflict should be received at least 2 days in advance of the meeting.
- Business, family, or personal conflict. Written notice should be received at least 2 days in advance of the appointment/meeting.
- Illness. Written notice should be received at least 1-2 hours in advance of the meeting.
- Family illness/emergency. Notice may be received as soon as possible.
- Leave of absence. Notice of the leave of absence must be filed with the staff liaison as far in advance as possible prior to the actual absence.

If circumstances occur that result in a need for extended absences, this should be discussed with the staff liaison. Absences will be considered on a case-by-case basis, and does not guarantee that your status as a member will not be affected. An absence may be unexcused if: 1) this is the member's third consecutive absence; or 2) continuing subject matter requires that the commissioner be present to receive the necessary information to make decisions on an issue at a future meeting.

Termination of Appointment

Removal from Office

The importance of being able to fulfill the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements may result in termination of your appointment. The following are reasons why members may be removed from a commission:

- Absence from three consecutive meetings
- Absence from 1/3 or more of all regular meetings in a year
- Non-filing of required Economic Interests and Disclosure (Form 700) or non-payment of fines for late filings. In addition to termination, non-filing will result in a one-year suspension of eligibility to serve on a commission.
- Non-attendance of required trainings
- Failure to take the Oath of Office
- Failure to meet eligibility requirements for membership

Ultimately, commissioners serve at the will of the Council.

Resignation

A commission member wishing to resign, whether at the time of or prior to the expiration of their term, shall submit a letter of resignation to the City Clerk and/or to their respective staff liaison. This letter may be submitted via post or email. The effective date of the resignation is the date it is received by the Clerk unless a future date is indicated. A new appointment process to fill a vacancy will not begin until a written resignation is received by the Clerk.

COMMISSION ORGANIZATION

Chair/Vice Chair

Appointment (Annual)

The Chair and Vice Chair are selected by the majority of the commission for a one-year term, and shall hold this position until a successor is appointed or until their terms as members of the commission expire. No commission members should serve as chair for more than two consecutive years; there is no limit for vice chair.

Although it is suggested that appointments occur at the beginning of the calendar year, Commissions may determine when it is appropriate to schedule chair/vice chair selection. All chair and vice chair appointments shall take place at a regular commission meeting and be recorded in the minutes.

The willingness and ability of an individual to serve as the chair or vice chair should be taken into consideration. Commissions should try to give all commissioners an opportunity to serve as chair, however the responsibilities of service as chair and vice chair do take some extra time.

Nominating members for Chair/Vice Chair

Commissions may choose their chair/vice chair utilizing various methods. Please note: Action by “secret ballot” is prohibited under the Brown Act.

Options include:

1) Formal motions to appoint specific individuals. Move/Second/Vote. Action will require a majority vote.
2) Ask for a show of hands to express interest. Staff will prepare and distribute a vote chart for members to complete. Staff will compile and read off the votes, thereby appointing through a grid system. Appointments through this method also requires a majority vote.

Some commissions may prefer a different structure than Chair/Vice Chair. Some commissions elect Co-Chairs who preside on a rotating basis determined by the commission. This type of alternative structure and others may be appropriately determined by each commission and its members.

Duties/Responsibilities

- Preside at all official meetings of the board, commission or committee. The Chair must exercise sufficient control of the meeting to eliminate irrelevant, repetitious or otherwise unproductive discussion. It is important, both from a productive and legal stance, that the discussion on the floor stay focused on the agenda item.

Information to Chairs on how to preside over a meeting is provided under the section, "Running a Meeting" (Chapter 4).

- Work with the staff liaison to assist with preparing meeting agendas. The Chair may assist staff in determining the order of the agenda, timing of items, etc.
- The Chair should act as an impartial facilitator to help the group achieve consensus on an issue and derive a decision from the discussion. The chairperson must ensure that all commissioner viewpoints are heard, and protect new thoughts from being rejected without evaluation in a fair and unbiased manner. The Chair should discourage blame-orientated statements, and solicit comments from reticent commission members. To achieve both the perception and the reality of impartiality, it can be helpful for the chair to hold off expressing his or her views on a matter until after everyone has expressed their thoughts, and not engage in debate.
- Attend City Council meetings or other advisory meetings as needed to represent the commission or to testify to the position of the commission, with the approval and authorization of the full commission.
- Sign correspondence from the commission with the approval and authorization of the full commission and the City Council.
- The Chair must manage, to the extent possible, activities of members of the public in attendance at the commission meeting. Disruptive and/or inappropriate conduct should be addressed. The Chair, working with the rest of the commission, should impose appropriate time limits for public comment based on a verbal or non-verbal survey of attendees wishing to speak on an item. The Chair cannot establish new rules related to decorum or meeting procedure without approval of the full commission.

Vice Chair
The Vice Chair must understand the roles of the Chair and must preside over meetings at which the Chair is absent (either due to actual absence or recusal from an item due to a conflict of interest).

Chair/Vice Chair Absence
In the event that both the Chair and Vice Chair are absent from a meeting, the commission may appoint an Acting Chair to preside over that particular meeting. This appointment shall only be in effect for that meeting.

Alternate Member

The Alternate member may participate in all discussions. However, they may not make a motion, second a motion, or vote on any agenda items except under the following circumstances:

- If one or more regular voting members is absent.
- If there is a vacant seat or a conflict of interest causing the number of regular voting members to be less than the full membership of the commission.
- If a voting member shows up late to a meeting, he or she cannot vote on the agenda item if the alternate has been designated at the start of that item.
- If only one of two alternate members may vote, the voting privilege is by seniority, or otherwise established by the commission.

If/when a regular member resigns prior to a designated term ending date, the Alternate will automatically assume the vacant regular position. The City will then recruit to fill the vacant Alternate position. The Alternate may also, upon the end of their term, request to be appointed to a regular position during regular biennial recruitments.

Individual Commissioners

Although members may be selected in part because they can represent the viewpoint of clearly defined groups, you should, upon appointment, pledge to represent the overall public good and not that of an exclusive group or interest. To be selected as a city of Davis commission member is an honor and provides an unusual opportunity for genuine public service. Although the specific duties of each commission vary widely with the purpose of which it was formed, there are certain responsibilities that are common to all commission members. The following is a summary of those responsibilities:

- Attend every meeting (contact staff liaison requesting an excused absence as soon as you know that you will miss a scheduled meeting).
- Abide by the Ralph M. Brown Act on open meetings. All members will receive the full text of the Brown Act. Once an individual is appointed to a commission, they must comply with the requirements of the Brown Act.
- Prepare in advance of meetings. Carefully review your commission meeting agenda and meeting materials prior to each meeting in order to be fully prepared to discuss, evaluate and act on all matters scheduled for consideration. Conclusions based on thorough investigation will strengthen the value of the commission's recommendation.

- Understand the role and scope of responsibility of the commission on which you serve.
- Serve as a model of leadership and inspire public confidence in Davis government.
- Represent fairly and fully the majority views of your individual commission. Do not speak for the commission unless authorized by action of the full commission. When appearing in a non-official, non-representative capacity before any public or private body, you should indicate that you are speaking only as an individual and expressing your personal views.
- Do not speak for the city unless authorized to do so by action of the City Council.
- Good communications – members are in a unique position of serving as a liaison between the city and its citizens and can help to reconcile contradictory viewpoints and in building a consensus around common goals and objectives.
- Supportive relationships with the City Council and city staff are basic for successful operation of any commission. In contacting city personnel on items of consideration, the proper channel is through the designated staff liaison providing support for your commission.
- Establish a good working relationship with fellow commission members – respect individual viewpoints, allow other members time to present their views fully before making comments, be open and honest, welcome new members, strive to minimize political action on issues.

All officials have an interest in supporting the chair's efforts to conduct meetings effectively and fairly. Commission members should all work towards achieving the following meeting goals:

- Receive and share information at meetings so everyone can make informed choices.
- Act and speak with honesty and integrity.
- Be respectful of other people's time. Stay focused and act efficiently during meetings.
- Be kind and respectful of your colleagues. All members of the commission bring different backgrounds and levels of experience to discussions.
- Share thoughts and perspectives, and reach a decision on what options best serve the public's interests and other community values.
- Reach decisions in a way that builds and maintains relationships as well as promotes trust in both decision-makers and the decision-making process.

ETHICS AND CONFLICTS OF INTEREST

Principles of Public Service Ethics

California has a complex set of ethics laws to guide local officials in service to their communities. Commissioners, in their capacity as an appointed official, should strive to keep the following principles in mind when determining the appropriate course of conduct in their decision-making:

- Public officials may not use their position for personal financial gain, nor does it entitle one to personal advantages/perks.
- Merit-based decisions based on fair process produce the best results for the public.
- Transparency in the decision-making process promotes public trust and confidence.

Minimum Standards

It is important to keep in mind that ethics laws are minimum standards. It is not possible to write laws to prevent all actions that could weaken the public's trust. Just because a given course of conduct is legal does not mean that it is ethical (or that the public will perceive it as such).

The California Political Reform Act

Most financial conflict of interest laws are contained in the California Political Reform Act. It states that a financial conflict of interest may exist when a person influences a decision that will materially affect an economic interest connected to you or your immediate family.

A commissioner may "influence" a government decision when he/she makes or participates in making; or when he/ she attempts to use his/ her official position to affect the outcome of a decision. Often, it is not enough just to abstain from voting on a matter in which you have a conflict of interest – the law requires that you completely refrain from all participation or attempts to influence the outcome.

Economic Interests and Disclosure (Form 700)

The Political Reform Act requires every city in California to adopt a conflict of interest code. The code is intended to ensure that decisions are made by public officials openly, honestly, and free from the motivation of personal gain. Many members of Davis' commissions are identified as decision-makers subject to its conflict of interest code. If you are a member of one of the advisory bodies listed below, you must refrain from participating in discussions in which you have a financial interest, and are required to file a Form 700 "Statement of Economic Interests" on a regular basis:

- Bicycling, Transportation, and Street Safety Commission
- Civic Arts Commission
- Finance and Budget Commission
- Historical Resources Management Commission
- Natural Resources Commission
- Open Space and Habitat Commission
- Planning Commission
- Social Services Commission
- Tree Commission
- Utilities Commission
- Personnel Board

Your Form 700 must be completed and filed with the City Clerk's Office at the following times:

- Within 30 days after appointment (Assuming Office Statement)
- On April 1st of each year while serving on the commission (Annual Statement)
- Within 30 days of leaving office (Leaving Office Statement)

You must complete and return a Form 700 even if you have "no reportable interests" to disclose. Failure to file on time may result in a penalty of $10 per day for late filings (up to $100), suspension and/or removal from the commission. Instructions and the period covered by each type of statement are included with the forms used for filing.

For most people, filling out a Form 700 will be an easy experience provided you read the instructions carefully. However, questions are bound to arise, especially if you have financial interests in addition to the income from your job, residence, or loan obligations. Commission members can contact the FPPC or the City Clerk's Office for assistance. Form 700s are public records.

What to Do If You Have a Conflict of Interest
If a member has a conflict of interest, the member must disqualify him or herself from participating in the matter. This includes all discussion on the matter as well as the actual vote.

You must take the following steps after you have determined that a conflict of interest exists under the Political Reform Act:

1. **Publicly identify the financial interest**. This must be done in enough detail for the public to understand the financial interest that creates the conflict of interest. Residential street addresses do not have to be disclosed.

2. **Recuse yourself from both the discussion and the vote on the matter.** You must recuse yourself from all proceedings related to the matter.

3. **Leave the room until the matter has been completed.** The matter is considered complete when there is no further discussion, vote or any other action.
   Exception: If the matter is on the consent calendar, you do not have to leave the room.
   Exception: If you wish to speak during public comment, you may do so, but this is the only time when you may be in the room while the matter is being considered.

What to do if you're in doubt
Whenever a member of a city board, commission or committee believes that there may be an economic conflict of interest, he/she should seek an opinion from the City Attorney or Fair Political Practices Commission. At any time, it is safest to err on the conservative side and to publicly identify the conflict, and follow the rules on disqualification.

Other Ethics Laws
Other conflict of interests laws prohibit commissioners from:
- Using his/her official position for personal benefit or gain.
- Having a financial interest in any contract or grants made or recommended by their commission.
- Engaging in employment or activities that are incompatible with their public office duties.

AB1234 Training
AB1234 (the Local Government Sunshine Bill) requires designated city employees and appointed/elected officials to take two hours of local ethics training every two years. Ethics Training recommended for members of commissions that have Form 700 filing obligations. The City of Davis, in collaboration with the City Attorney's Office, hosts regular Ethics Trainings which cover general ethics principles (public interests, fairness, etc.) and laws (conflicts of interest, use of public resources and funds, etc.).

CHAPTER 3
COMMISSIONER ROLES AND RELATIONSHIPS

ADVISORY ROLE

The primary role of city of Davis commissions is to review and make recommendations to the City Council on matters within the commission's scope of responsibility as set forth in the enabling resolution/ordinance, and to promote increased public awareness, public input and citizen participation into the determination of city policies. The specific role of a city of Davis commission is that of citizen's advisory "arm" of the City Council, focusing attention on specific planning and program activities of the city. On specific matters referred to them by the City Council, commissions serve as the reviewing body of the city. All recommendations, however, are subject to approval and revision of the City Council.

City Council

Relationship to Council

Members of city commissions are sometimes referred to as the "eyes and ears" of the City Council. They serve an important role in extending the reach of the democratic process into the community. Even though the Council relies on the work of city commissions, there should be no confusion about the separate roles of each.

Commissioners are not appointed to relieve elected officials of making political decisions. Commissioners should avoid trying to predict actions or votes of individual Council members, however this does not preclude them from interpreting elected officials' philosophies.

Commission members should also recognize that the elected body's jurisdiction is much broader, and in some cases the commission's recommendations may not be followed. Commissioners should not interpret this as a rebuke but rather an inevitable part of the process. You may disagree with the City Council on any matter, but once the Council has established its position, your actions as a commissioner should not be contrary to the adopted policies and programs. If problems arise because of differences between Council decisions and the personal values of a commission member, which would interfere with continued board/commission service, resignation from the board/commission is the appropriate response.

<u>Commission Recommendations to the Council</u>

Commissions may submit items to the City Council to be placed on the Consent or Regular Calendars of the Council agenda. Commission proposals to the City Council should be provided in writing via the staff liaison or department of the staff liaison, and should represent the views of the commission as a whole. Action items should contain a specific recommendation for Council approval, adoption or authorization. Recommendations should be clear about who is taking action and what the action will accomplish. Informational reports advise or inform the Council on a

subject or commission activity, but does not request any action or report by the Council. A report to Council should state the full commission motion and the list how each commissioner voted in its decision-making process. These reports should also include the completed minutes from the commission meeting(s) at which the subject matter of the report was discussed. Action or informational reports aside, commission minutes should be routinely forwarded to the City Clerk's Office to be placed as a (stand alone) informational item to Council.

The City Council has determined that Council members should not lobby commissioners for particular votes. However, Council members may request that commissioners consider certain issues during their deliberations.

City Council Liaisons to Commissions

Each member of the Council is assigned to serve as a liaison with one or more city commissions. The purpose of the liaison assignment is to facilitate communications between the City Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, Council Members may elect to attend commission meetings periodically to observe the activities of the advisory body or simply maintain communications with the commission chair or staff liaison on a regular basis.

Council members are not participating members of the commission, but are there to create a linkage between the City Council and commission. In interacting with commissions, Council members are to reflect the views of the full Council body. *(Procedures Manual for Council Members)*

Joint Discussions/ Meetings with the City Council

Periodically, the City Council may choose to meet with a commission. These meetings may focus on a specific issue or issues, or they may more generally cover topics of mutual interest to the two bodies. The meetings may be joint discussions at a City Council meeting or may be a joint meeting between both bodies. The staff liaison and the Council liaison will work with the commission to prepare for the meeting.

Staff Liaison

Duties of the Staff Liaison

The City Manager designates staff to serve as the staff liaison to city boards, commissions and committees. Generally, the staff liaison is appointed from the department in which the commission is housed. The staff liaison attends all meetings of the commission, prepares the agenda, acts as technical advisor, and finalizes the minutes for the commission's approval at its next meeting. Requests for information or support should be directed to the staff liaison, not directed to other city staff.

More importantly, the staff liaison must at all times consider the policy and fiscal impacts of proposals and provide commissioners with early and timely information about not only the fiscal and policy impact of a proposal in and of itself, but its relationship to overall department and citywide fiscal capacity and priorities. Commission liaisons must be constantly aware of the responsibility to represent overall Council priorities and administrative policies of the City.

The staff liaison has a responsibility to:

- Keep the commission informed of changing policies, procedures, and Council goals, to suggest methods to accomplish these goals, and provide resources for the commission to seek out information or solutions to a problem.
- Provide background and context on a subject.
- Post the agendas and minutes in a timely manner.
- Educate new members about their role and responsibilities, and at times, coach individual commission members to encourage participation and develop their skills.
- Keep the board, commission or committee focused on priorities.
- Take initiative to inform commissioners about activities, projects and work that is taking place elsewhere in the organization and among other commissions, especially in areas that may overlap with items up for discussion on commission agendas.
- Present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified. To this end, staff liaisons must also alert the commission of possible detrimental actions.
- Respond in a timely and professional manner to requests made by individual commissioners for information and assistance. Staff responses to individual commissioner comments/questions should be distributed to all commission members if the liaison believes the material may be of interest. If a commission desires information or a report that will require an excessive amount of staff time, the commission should present the request to the Council for approval. The Council may then consider the request in the context of current Council goals and determine the priority of the request. Following this procedure will prevent staff from diverting from priority projects.
- Ensure that motions and minutes accurately reflect the actions taken and the intent of the commission at the meeting.

Relationship Between Commission and Liaison

The staff liaison's responsibility is but one of many tasks assigned to that staff person. While the liaison's role is to assist the commission, the liaison and other staff are not employees of the commission. At all times staff is directly responsible to their department director and to the City Manager. Commissioners should realize that the assigned staff person reports directly to a supervisor and may not be able to carry out every recommendation or request that the commission may have. Commissions may set priorities for their own agendas and work plans, but must keep in mind that the liaison is responsible for allocating his/her time and efforts according to his/her role as staff.

The following are recommended ways to avoid misunderstandings and to keep the channels of communication open:

- All contacts from commissioners to other members of staff should include or be transmitted through the staff liaison. Conversely, all contacts from City staff to the commission should also go through the liaison.
- Contacts with staff members should clearly be in the framework of the commission's function/scope.

- Citizen complaints received by commissioners should be referred directly to the staff liaison.
- Citizen correspondence received by commissioners should be forwarded to the staff liaison for record keeping.
- Commissioners who wish to share information with the rest of the Commission should do so at commission meetings, or through the staff liaison who will determine the appropriate method of distribution- which may include a formal agendized item for commission discussion.
- Commissioners shall not ask for individual reports, favors, or special considerations. At times, members of the commission may wish to review additional documents or receive special reports. Staff should only fulfill these types of requests if the full commission comes to a consensus that they wish to receive this information. Commissions should not ask staff to commit staff time for work that has not been budgeted or has not been approved by their Department Director or the City Manager.
- It is not expected that every staff recommendation will be approved; however, based on the technical knowledge of staff, consideration should be given to their proposals and recommendations. If the commission does not agree with the recommendation put forward, staff will report the commission's stance on the issue to the City Council. In addition, staff has the option of making his/her original recommendations to the Council through the City Manager.
- Treat all staff as professionals. Acknowledge the abilities, skills, experience and dignity of every employee of the city of Davis. Recognize that staff liaisons also value their family and personal time. Accordingly, contacting staff during non-working hours is generally discouraged.
- Commissioners should not criticize or embarrass city staff in a public setting. If you have a concern about staff performance, it should be brought privately to the staff member's Department Head or City Manager.

RELATIONSHIPS WITH OTHER COMMISSIONS, OUTSIDE AGENCIES, GENERAL PUBLIC

Other Commissions

Commissions may, from time to time, wish to receive a report on a particular item from another commission's agenda, or communicate with the commission on a particular item/topic. A member from one commission may elect to attend another commission's meeting and report back to the commission they serve. Members electing to attend other commission meetings are not permitted to partake in meeting discussions with that commission as an official commission member would. Members attending meetings in order to communicate with another commission may do so during the public comments at that meeting.

Joint Commission Meetings
Two or more commissions may hold a joint meeting to discuss an issue that falls under the purview of multiple commissions. While it may be noticed as a "Joint Meeting," in practice it is really two separate meetings occurring at the same place and time. The staff liaison for each commission must prepare separate agendas and post them accordingly. During the meeting, each commission must vote independently on each agenda item. Staff liaisons for each commission shall prepare separate minutes for the meeting as well.

Outside Agencies

Interjurisdictional Bodies (Davis Joint Unified School District, UC Davis, Yolo County)
When a commission wishes to correspond with an outside agency, correspondence should be either coordinated with efforts of the City Council or reviewed and approved by the City Council.

Requests from an outside agency for commission support or opposition on matters should either be in accordance with official city policies or stances on issues, or reviewed and approved by the City Council. Request for commission representation on an advisory body (i.e. a member from the commission serves as city representation on a County or DJUSD Committee) should be authorized by City Council and incorporated into the commission enabling documents.

Community Groups / Non-Profits
Commissioners may, from time to time, be approached by community organizations relating to matters under the purview of the commission. It is not uncommon for community groups to present proposals and recommendations for commission review. Such proposals should be referred to City staff for analysis.

Commissions should not present proposals to the City Council through community organizations. This method of advancing proposals, especially those without further analysis from City staff, carries the political influence of that organization, which puts the Council in a difficult position to consider the proposal on its merits alone.

Developers

Large projects/applications may come before commissions as part of the City's normal review process. At times, individual commissioners may be approached by developers or applicants in order to lobby approval for their projects. If a member of a commission meets privately with an individual or entity that has an item coming before the commission, the member should do so without making voting decisions or commitments. Equal opportunities and due process must be extended to all parties in matters under consideration. Commissioners may wish to disclose such contacts at the commission meeting when the item is discussed. Commissioners are not restricted from engaging in communications with developers or applicants, however they may decide their comfort level with such discussions on a case by case basis. It is also acceptable to decline all invitations or refer them to staff.

Commission Review of Development Proposals

1. In general, when the City receives a development proposal, staff will determine if the proposal is consistent with policies set forth by the City Council and include that determination in its analysis to the decision-making body. When there are inconsistencies with existing policy or when a proposal has outstanding characteristics in a certain area, staff will in a timely manner refer the proposal to the appropriate commissions for review of the proposal and provide information to commissions on specific issues of concern. Commission Review will occur before proceeding to commissions with regulatory authority or City Council.

2. The Planning Commission, Historical Resources Management Commission and Social Services Commission will review development proposals as outlined in the Zoning and Affordable Housing Ordinances. The Senior Commission, using the Guidelines for Housing that Serves Seniors and Persons with Disabilities, may review affordable housing plans consisting of 5 or greater affordable housing units and all senior housing projects. The Finance and Budget Commission will review fiscal and budgetary implications to the city of development proposals.

3. Recommendations on policy matters, such as new ordinances, will generally be made by the Commission with the most explicit or direct policy purview, even if the policy affects private development.

4. Rather than make an endorsement for, or state opposition of a development proposal in its entirety, a commission should provide the pros and/or cons of a project relative to their specific area of expertise. (This does not apply to commissions that may have review authority on a proposal, such as the Planning Commission or Historic Resources Management Commission.)

5. Where appropriate and feasible, the Council encourages commissions to hold joint meetings with other commissions to receive presentations for development proposals.

Media

Most members of city commissions have limited contact with the news media. However, there may be situations in which a member of the media may contact you for comment on "hot button" issues or "big ticket" items appear on commission agendas.

Commissioners should be aware that statements or opinions made to members of the media are considered on the record by reporters. You do not have to answer media questions just because they are asked. "No comment" is legal and at times preferable. Refer the media to City staff or Council members.

It's safest to never "go off the record." Most news professionals will honor an agreement to not quote you, but there is potential for embarrassment. Words that are not said cannot be quoted. Choose words carefully and cautiously. Comments taken out of context can cause problems. Be cautious about humor, sardonic asides, criticism, sarcasm or word play.

Be clear when you are speaking as an individual, and not on behalf of the commission, the City Council or the city in general. If it is a subject that is going to come before your commission it is probably inappropriate to be talking about it to the media.

General Public

Commissioners are encouraged to seek out and become aware of public opinion relating to their field of influence and to welcome citizen input at commission meetings. Spreading word of citywide opportunities and resources to increase citizen involvement is encouraged.

Commissioners are reminded that they are representatives of the City of Davis. The City serves a diverse population and has specific policies against discrimination. Statements that can be interpreted as discriminatory against any group should be avoided, at all times.

Commissions have the obligation to consider the benefit of the entire City, to be fair, objective and courteous, and to afford due process to all who come before them. In addition, public statements by the commission or individual commissioners should contain no promises to the public that purport to be binding on the commission, staff, or City Council.

Commissioners may interact with the public outside of meetings, however, they should encourage citizens to send their comments to the staff liaison for distribution to all commissioners or come to a meeting and speak during public comment. This allows the full commission to hear and consider all pertinent information and points of view. For information on dealing with members of the public during meetings, please see the section on "Public Comment" (Chapter 5).

All communications from the commission to members of the public must be transmitted through the commission staff liaison, whether directly or copied on all e-mail correspondence. Similarly, arriving communications should also be received by staff liaisons. Official responses to citizen inquiries must be approved by the full commission and/or sent via the staff liaison.

ENDORSEMENTS AND COMMUNICATIONS

Endorsements/Political Activity

Serving as a commissioner does not restrict you from participating in political activities at any level of government, whether local, state or federal. However, if you do take a position on a political issue outside of the role of commissioner, it is important to take steps to assure a distinction between your personal viewpoints and positions of the commission. You may use your title as a commissioner for identification purposes only when participating in these activities, and you MUST make it clear that you are not representing or speaking on behalf of the commission. Further, a commissioner may not use public resources for personal gain, including political gain, or support of campaign activity for a candidate or ballot measure. Please contact your staff liaison and/or the City Clerk's Office if you have questions regarding political activity by individual commissioners or your commission.

Commission Signed Documents/Communications

Commissions may be called upon to write letters to citizens, businesses or other public agencies. Correspondences from the commission must be co-signed by the chair and the mayor. Commissioners from time to time may correspond with citizens in response to inquiries or provide requested information. In these circumstances, members should clearly indicate within the letter that they are not speaking for the commission, but for themselves as a member of the commission.

Official communications and use of the City logo is restricted for use by City staff only. The logo may not be used for other purposes unless otherwise approved by the City Council and/or City Manager.

When a commissioner speaks before a public body, the commissioner needs to inform the agency they are speaking for the commission and has been authorized to speak for the commission. If a commissioner is not speaking in an official capacity they must explain they are speaking for themselves

CHAPTER 4
MEETINGS AND PROCEDURES

THE BROWN ACT

The Ralph M. Brown Act ("Brown Act") is a state law that applies to any "legislative body" in the State of California. Under Gov. Code Sec. 54952(b), commissions, committees, boards or other bodies of a local agency, whether advisory or decision-making, temporary or permanent, created by charter, ordinance, resolution or formal action of the legislative body (the City Council), are themselves considered legislative bodies. To this end, every task force, committee or other advisory group is likewise a "legislative body," if it was created by formal action of the Council.

The purpose of the Brown Act is to ensure that the public has adequate notice of what its elected and appointed officials do, and that their decisions and deliberations also take place in public. The full text of the Brown Act is available to you (Appendix B) as well as a summarized guide "Open & Public V" (Appendix C) to supplement the basic information provided in this section. It is advisable that you review both documents thoroughly, as this section will provide only a basic understanding of topics, including:

1) What constitutes a public meeting
2) Types of public meetings
3) How meetings are noticed to the public
4) How meetings should be conducted (meeting procedure)

What Constitutes a Public Meeting

A "meeting" for which public notice must first be given is defined as any gathering of or communication between a quorum of the members of a local body at the same time and location to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of that body.

Quorum

A quorum is the minimum number of members that must be present for a group to conduct business. A quorum is one more than a majority (or, often, one more than half) of the authorized seats on the commission. The number needed for a quorum does not change because of vacancies on the commission. For a seven-member commission, a quorum of four must be present. For a five-member board, a quorum is three members.

If a quorum is not achieved after 15 minutes from the start time of the meeting, the meeting should be cancelled. Present commissioners should not discuss <u>any</u> agenda items.

If at any time during discussion, a commissioner leaves the dais and the remaining membership seated is less than a quorum, the Chair should immediately either recess or adjourn the meeting. If a member must leave the room because of a conflict of interest resulting in the membership

seated as less than a quorum, then the item must be continued to a later time or date when a quorum of members may be present to discuss the item.

Serial Meetings Prohibited
Members should be cautious about discussing commission business outside of a formal meeting with other commissioners to avoid engaging in a serial meeting. “Serial Meetings” occur when a quorum or majority of the members of a local body 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 local body outside of a formal meeting. Serial meetings are prohibited under the Brown Act.

Most frequently, serial meetings can occur in email correspondence. It is very important that you restrict your communications with fellow commission members or City staff to avoid reaching a consensus outside of a noticed public meeting. It is advisable not to use “Reply All” on any email correspondence from staff or members of the public if all members of the commission, or a quorum thereof, are listed recipients.

Serial meetings can also occur if staff or a commissioner acts as a hub by reaching out to individual commissioners to develop consensus regarding an item of business, even if the members never communicate to each other directly.

Exceptions - Gatherings That Are Not “Meetings”
You are not precluded from attending community meetings or conferences; or attending purely social, recreational, or ceremonial occasions at which a majority of the commission may be present - so long as you do not discuss business items within the jurisdiction of your board or commission.

Types of Public Meetings
There are two types of public meetings you should be familiar with: Regular Meetings and Special Meetings. Each has its own requirements, as discussed below:

Regular Meetings
All boards and commissions must take formal action (by a motion and vote) to establish a regular time and place for holding regular meetings. (For example: "7:00 p.m. on the first Monday of every month at City Hall"). Regular meetings must be noticed to the public at a minimum 72 hours in advance.

Special Meetings
Special meetings are discouraged by the City Council and should be used only when necessary, under extraordinary circumstances. In order to hold a special meeting, the City Manager must be consulted for approval. An explanation must be provided of the special circumstances that necessitate the meeting including when the topic/issue was brought to the attention of staff or the commission, and why it is time sensitive. Special meetings may be called by the chair or a quorum of the commission and coordinated through the staff liaison. Written notice must be given to the commissioners and to the media 24 hours prior to a special meeting.

Special meetings may take place at a date, time, or place that deviates from the regular meeting schedule. The main difference between a regular meeting and a special meeting is the type of business that is conducted at each meeting. Special meetings agendas should be focused on the specific matters requiring immediate action, and not include non-urgency items such as commission communications, subcommittee or liaison reports, or approval of minutes. Public comment during special meetings is restricted to only those items/topics specifically listed on the agenda; general public comment on matters not listed on the agenda is prohibited.

How Meetings are Noticed (Agendas)

An agenda for each meeting of a city commission is prepared by the staff liaison in consultation with the chair. The agenda outlines the topics or items of business that will be introduced, discussed, and acted upon at each meeting. Regular meeting agendas must be posted at least 72 hours prior to the meeting in order to comply with the Brown Act.

Agenda Format

All commissions shall use a standard agenda format, as provided by the City Clerk's Office. All agendas should contain the following information:

- Name of the legislative body
- Meeting Date, Time, and Location (common name and address)
- Names of all commission/committee members
- Name of primary staff and/or staff presenters
- Items to be discussed at the meeting. Agenda items need to be descriptive enough that the general public may understand what matters are to be discussed and potentially decided upon at the meeting.

A sample agenda for both regular and special meetings are provided as Appendix D.

Placing Items on the Agenda

A commissioner may request an item be considered on a future agenda and, if it falls within the commission's subject matter jurisdiction and upon consensus of a majority of the commission, staff will prepare a staff report or presentation if formal commission action is necessary. Timing of items and scope of items may be dependent upon the commission work plan and/or available staff resources.

A member of the public may request an item be placed on a future agenda during public comment or through other communications with staff or commission members, and if it falls within the commission's subject matter jurisdiction and upon consensus of a majority of the commission, a staff report or presentation will be prepared and/or approved by the staff liaison. Again, timing and scope may be dependent upon other matters currently underway.

Discussion of items to be placed on future meeting agendas may take place at each meeting during a Long Range Calendar/Upcoming Meeting Dates item, most commonly discussed prior to adjourning the meeting.

Adding Emergency Items to the Agenda

In rare cases, an item may be added to the agenda if there is a need to take immediate action on an issue which came to the attention of the City less than 72 hours before the meeting.

The Brown Act defines an "emergency" as "work stoppage, crippling activity that severely impairs public health, safety or both…". Should such an issue arise, the staff liaison will work with the City Clerk's Office and the commission to ensure it is agendized correctly. To add an emergency item, the commission may only do so by a two-thirds vote (of the total authorized membership), or by unanimous vote if less than two-thirds of the members are present. Time permitting, the commission may choose to schedule a special meeting at a future date for which at least a 24-hour notice can be issued to the public.

Cancellation of Meetings
A meeting may be canceled if there are no items requiring commission input. If this happens, staff will post a notice of cancellation. A notice of cancellation should be posted at least 72 hours prior to the meeting whenever possible, or as soon as it is known that the meeting will not occur.

A meeting will also be cancelled if there is not a quorum of members in attendance at a regular or special meeting. It is important that commission members notify staff as soon as possible if they will be unable to attend any meetings. The Chair should wait no more than 15 minutes from the official start time of the meeting for late members. After 15 minutes, if a quorum is still not achieved, the meeting should be cancelled. Present commissioners should not discuss any agenda items.

List of Persons Requesting Mailed Notice
Any person who requests a copy of the agenda and agenda packet must receive a copy at the time that these materials are posted or distributed to a majority of the members of the commission.

The City of Davis has implemented an e-mail list serve to provide an easy way for individuals to continuously subscribe to receive agendas for any/all city commissions. Individuals may sign up for the City list serve online (cityofdavis.org). This service continues until the individual unsubscribes him/herself from that commission mailing list.

Any request for mailed hard copies of agendas or agenda packets are subject to a fee equal to the cost of providing the service, and must be renewed each calendar year.

Agenda Packets
Agendized items may or may not include a written staff report. If provided, staff reports should be modeled after the format used for City Council.

Items prepared by staff for agendized items (i.e. supplemental reports and/or presentations) after packet delivery will be posted online with the rest of the meeting materials as soon as possible. Hard copies of any documents provided at the meeting must be made available for public review during the meeting; any requests for copies of these materials must be provided within one business day of receipt of the request.

Public communications on agendized items that are received by staff either via email or hard copy will be provided to commissioners prior to the start of the meeting, generally several hours ahead of time to allow for review. Late communications received prior to the meeting may only be available in hard copy. All such communications are public records and will be maintained accordingly and/or provided upon request.

Location and Accessibility of Meetings

Location

Commissions establish a regular meeting day, time and location. These should be occasionally reviewed to ensure that they meet the needs of the commission to conduct business effectively.

The City of Davis provides meeting facilities at several locations.
Each location differs in size and amenities. Meeting rooms often used are:

- Community Chambers at City Hall (23 Russell Boulevard)**
- Community Chambers Conference Room (23 Russell Boulevard)
- Hattie Weber Museum (445 C Street)
- Senior Center Valente Room (646 A Street)**
- Senior Center Activity Room (646 A Street)*
- Senior Center Multi-Purpose Room (646 A Street)**
- Veterans Memorial Center Game Room (203 E 14th Street)*
- Veterans Memorial Center Club Room (203 E 14th Street)*
- Veterans Memorial Center Multi-Purpose Room (203 E 14th Street)*

* amplified sound available
** amplified sound and listening devices readily available

Some meeting rooms have a conference room setting. Members of the commission should be seated together, and staff may also sit at the table. However, to maintain order and reduce the risk of individuals speaking out of turn, members of the public should not be seated at the table. There should be a separation between the commission, staff, and members of the public.

Accessibility

All meeting facilities must be ADA accessible, this includes consideration of doors (unlocked, automatic), building/structural concerns (i.e. stairs, elevators, ramps, etc.), meeting room layout (walkway width, access to chairs and doors), etc. If the accessible entry or path of travel is other than the main entrance or walkway to the meeting location, such information and directions should be noted on the agenda or clearly posted at the building location.

Listening devices are available for use in some meeting rooms. Upon request, staff will make appropriate accommodations for members of the public who require listening assistance. If possible, notice should be received by staff at least 24 hours in advance of the meeting. If less time is provided, all reasonable efforts will be made to accommodate.

Closed Sessions

Closed sessions are not allowed except as authorized by the Brown Act. In general, only the City Council/Redevelopment Successor Agency and the Personnel Board hold closed sessions.

MEETING PROCEDURE

Parliamentary Procedure and Rules of Order

City commissions follow a modified version of Rosenberg's Rules of Order, Simple Parliamentary Procedures for the 21st Century as adopted by the City Council. The adoption of rules was undertaken to simplify procedures. A scaled-down and modified version is appropriate for commissions. It is highly recommended that commissioners thoroughly review these procedures, provided as Appendix E to this handbook.

The use of parliamentary procedure:

- Promotes cooperation and harmony so that people can work together more effectively to accomplish their goals.
- Guarantees each individual an equal right to propose motions, speak, and ask questions and vote.
- Protects the rights of minority points of view and gives the minority the same consideration and respect as those in the majority.
- Encourages the full and free discussion of every motion presented.
- Ensures that the meeting is fair and conducted in good faith.

Order and Decorum

Members should accord the utmost courtesy to each other, to city employees, and to the public appearing before the commission, and should refrain at all times from (1) rude and derogatory remarks, (2) questioning the integrity of the speaker, (3) abusive comments, (4) statements about the member's personal feelings about the speaker's motives, and (5) personal attacks.

Any member may move to require the chairperson to enforce the commission rules; the affirmative vote of a majority of the commission will require the chairperson to so act.

Members of the public attending commission meetings are expected to observe the same rules of order and decorum applicable to members. Any person speaking out of turn, or otherwise disrupting the commission's ability to conduct business, may be asked to leave.

Establishment of Meeting Rules

Some commissions conduct their business according to an established set of procedural guidelines. Guidelines may include, but not be limited to, how reports and/or presentations are presented to the commission, how the commission makes recommendations to the City Council, procedures for public comment, etc. An example of commission-created procedural guidelines are provided as (Appendix F).

City Council Ground Rules
The City Council has also established Ground Rules and basic protocol for meetings. A copy of these Ground Rules is provided as (Appendix G).

Chair: Running a Meeting (Presiding)

It is the Chair's role to facilitate meeting protocol, ensuring that meetings are conducted in an orderly and timely manner. Staff liaisons may assist the Chair in starting the meeting on time and provide guidance in meeting protocol. Staff may also facilitate and promote effective communication amongst the commission and with the Chair.

Some key things to keep in mind:

- **Start meetings on time.** Do not begin the meeting unless a quorum of members are present. The meeting should be cancelled if a quorum cannot be obtained after 15 minutes from the official start time of the meeting.

- **Explain the process.** Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. Announce agenda items and explain the process for receiving presentations, public comment, hearings, etc. at the beginning of each item.

- **Maintain order.** Do not allow members of the public to clap, cheer, whistle, and so on, either for or against testimony that is being presented or in response to comments by commission members during deliberations. The chair should "gavel down" this kind of behavior and run an orderly meeting. The chair should also not permit members of the commission to accuse or overtly challenge one another or any members of the public. To this end, dialogue between commission members and persons testifying should be limited to fact gathering which will contribute to the commission's decision-making ability.

- **Manage public comment.** Members of the public should not speak out, except on their turn during an opened public comment period. Public comment should be held to a reasonable length of time, particularly if a large number of people want to address the commission. Individuals requiring use of a translator must be allowed at least twice the amount of time for comment. The chair should discourage successive speakers from repeating the same testimony over and over again. While there is a need to keep the comments moving in a timely manner, the commission must be fair, impartial, and respectful. Give your full attention when others speak. Once the public comment period has been closed, only commission members or staff are permitted to speak on the item.

- **Understand parliamentary procedure.** The chair must understand order of business, making motions, amendments to motions, what is or is not debatable, and so on.

- **Manage Discussions** Commissioners should try not to speak more than once on an item until every other member has had an opportunity to speak. Commission members are encouraged to discuss items during the decision-making process and may ask staff to respond when appropriate. The Chair should allow other members to speak first and then give his/her views and summarize.

- **Keep the business moving.** The commission should not endlessly mull over matters, continuously request new information, and/or otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by commission members, and bring matters to a vote or bring the discussion to a close.

- **End meetings at a reasonable hour.** Keep the agenda in mind in order to give each item the appropriate time. Be mindful of how many items have yet to be heard.

Public Comment

Any member of the public is welcome to address the commission regarding matters listed on the meeting agenda. Regular meeting agendas will also include a general public comment time for people to comment on any item of interest that is within the commission's subject matter jurisdiction, regardless if it is or is not agendized. Speakers will be asked to state their name for the record, although it is not a requirement that they do so.

Individuals may only speak one time per item, although the commission may ask that an individual return to clarify a comment that was made. In order to conduct business, the commission will limit the amount of time allotted to public participation. However, the commission may not place similar restrictions on the content of public comments (as long it is within the commission's subject matter jurisdiction), including prohibiting members of the public from expressing negative or critical comments of the City, staff, its legislative bodies, policies, procedures, or programs; such actions are a violation of their first amendment rights.

Time limitations

Comments are usually limited to no more than 3 minutes per speaker per item. The commission may adjust the time limits allowed to speakers depending upon the number of public in attendance (i.e. if more than 10 people want to speak on an item, the commission may limit to 1 or 2 minutes per comment). Procedure and time limits for public comment must be announced at the beginning and uniformly enforced for the duration of the comment period.

AB 1787 – Open meetings: public comments: translation.
If the commission limits time for public comment during a meeting, a member of the public who utilizes a translator must be provided at least twice the allotted time for comment; unless simultaneous translation equipment is used. This ensures that non-English speakers receive the same opportunity to directly address the legislative body.

General public comments vs. agenda item comments

Every regular agenda will have a designated item dedicated to receiving general public comments on any items on/off that meeting agenda. It is suggested that members of the public address comments regarding the consent calendar, communications, long range calendar/work plan, or any items not listed on the agenda during this comment period. The commission should take comments on regular/business agenda items upon discussion of those items.

Public Member Items Submitted at Meetings / Presentations

Applicants and members of the public may provide documents to the commission and/or request to provide a short presentation during public comment. Requests for showing a presentation must be received by staff at least 24 hours in advance of the meeting, and a presentation file must be received prior to the start of the meeting to ensure it is ready when that individual stands up to give their comments. Please note, audiovisual (AV) equipment is limited and may not be available in all meeting facilities; members of the public are encouraged to discuss options with staff prior to the meeting date.

Public Hearings

This section is specific to meetings held by the Planning Commission, Historical Resources Management Commission, and Social Services Commission.

Where a public hearing is mandated by law, additional noticing requirements to affected parties may be applicable depending on the subject matter of the item and anticipated actions to be taken.

Hearing Procedures

When conducting a public hearing, procedures may depend on the subject matter and time available. Generally, a public hearing is the first regular item heard on an agenda, following the consent calendar. Hearings are run in a quasi-judicial fashion, and minimum requirements for receiving testimony must be met. These include but are not limited to an introduction by the liaison or the chair, testimony by affected parties, interested citizens and presentation of documents.

On occasion, the commission may wish to recall the applicant to clarify remarks for the commission, however, this does not re-open a public hearing, and no further public testimony is allowed. Legal issues may arise if the commission appears to base a decision on statements made by the public after the public hearing is closed. Hearings should be formally declared open by the chair and are formally closed after hearing all testimony.

Any action resulting from the hearing must be clearly stated for the record. If no action is taken, it should be announced by the chair and advise the public of when action is expected to take place. If the item must be postponed, the commission must determine an exact date and time when the hearing shall return to the commission.

MOTIONS AND VOTING

Motions

A motion is the way that a group under parliamentary procedure conducts business and makes decisions. There are several types of motions, each of which must meet certain requirements before a vote can be taken. A full and complete guide to types of motions and rules are found within Rosenberg's Rules of Order.

Steps in making, discussing and voting on a motion:

- The maker of the motion asks for recognition by the Chair, or the Chair may solicit a motion from commission members
- After the individual is recognized, he/she will state "I move …"
- The Chair will ask if there is a second. Another member of the group must second the motion in order for discussion to start on the motion.
- The Chair then restates the motion "It has been moved and seconded that …" and opens the floor to discussion.
- The Chair will recognize members who wish to comment on the motion. Only one motion may be discussed at a time. It is important that all members of the group are clear on what the motion is and what its effect will be. Spirited discussion helps to answer questions and explore different interpretations and/or impacts of the motion.
- At the end of the discussion period the Chair will "call the question" and ask how many members vote "Aye" and how many vote "No" or "Abstain". A motion is passed when a majority of members present votes in favor of the motion (members who recuse themselves due to a conflict of interest must leave the room, are not counted toward establishing a quorum or tallying votes).

Phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Commissioners may wish to write out motions beforehand or ask staff to prepare a draft motion.

Friendly Amendments

The "Friendly Amendment" is an informal method for commissioners to request a minor change to the motion on the floor (while retaining the basic form of the original motion). A commission member may propose a friendly amendment, which must then be accepted by the main mover and seconder. Friendly amendments should only be used for minor adjustments, such as adding a word or phrase to the motion. Significant changes to a proposed motion should be proposed as a substitute motion, not as a friendly amendment or motion to amend.

Substitute Motion

At any time after a motion is moved and seconded, a member of the commission may move a substitute motion for consideration in place of the main motion. If the substitute motion is seconded, then discussion on this motion will take priority over the original motion. The commission will deliberate and then vote on the substitute motion. If it passes, the original motion becomes moot. If the substitute motion fails, the discussion will revert to the main motion. In the event of multiple substitute motions, the commission should address the latest motion proposed. There should never be more than two substitute motions (or three total motions) on the floor at any time.

Withdrawing a Motion
At any time after formation of a motion and before it is taken to a vote, the maker of the motion may interrupt a speaker to withdraw his or her motion from the floor.

OTHER TYPES OF MOTIONS
Motion to Continue
A motion to continue an item is to continue to another meeting, at a specific time and date. This type of motion requires a second.

Motion to Table
This type of motion is intended to immediately stop discussion and causes a vote to postpone a matter indefinitely or to a time and date certain. A motion to table takes precedence over all motions except adjourn and privilege. A motion to table requires a second. Once an item has been tabled, a motion to un-table the item is needed to bring the item back to discussion.

Motion to Reconsider
A motion to reconsider must be made at the same meeting or within two meetings of the original action. If the motion to reconsider is made at a subsequent meeting following the original action, intent to reconsider the item must be agendized. This type of motion may only be made by a commissioner who voted in the majority on the original motion. It also requires a second, of which any voting member of the commission may do so (not just those who voted in the majority). The motion is then subject to a vote. If the motion to reconsider passes, then the original matter is back before the commission and may be discussed and debated as if it were on the floor for the first time. Motions to reconsider are not applicable to "table" motions. During discussion, testimony should be limited to new facts that were not known at the time of the original motion.

The timelines for motions to reconsider must be strictly adhered to for binding deadlines, contracts, and any quasi-judicial matters. Policy related matters may allow for additional flexibility, but that type of circumstance will require specific staff analysis and/or city attorney consultation.

Voting
When present, all commissioners are to vote. Failure of a seated commissioner to orally express a vote constitutes an affirmative vote.

Members of city commissions are expected to participate in all decisions of their commission. There are two primary exceptions – a defined conflict of interest when a member must recuse themselves and leave the room, or due to a fairness issue such as personal animosity between the member and an individual appearing before the group. In all cases, care must be taken to ensure the fair, impartial deliberation process by the board, commission or committee.

Absence does not automatically disqualify a member from participating in a vote on an issue. If a member misses all or part of the proceeding in which information about the issue was presented, he/she can become familiar with the record of the meeting such as through minutes, studying the staff report or recorded version of the meeting, or discussions with staff.

Commissioners with a conflict of interest must step down, leave the room and not participate in the discussion or vote on the item; these members are considered "absent" for that item and may not be counted either for the purposes of establishing a quorum or for the tallying of votes. The majority of members (present and voting) must vote in the affirmative of the motion for it to pass. Commissioners are never required to state reasons for a dissenting or supporting vote.

Calling the Question

The Chair will call the question once it has been determined that discussion has reached a point where the commission is ready to vote. Generally, commissions will take a "voice vote" (see below). Commissioners may also declare a consensus on an action if there is agreement and no negative comments/objections have been expressed during discussion. If it is unclear whether a majority exists, or upon request of any commissioner, a roll call vote should be taken and recorded (see below). In any scenario, the Chair should announce the results (motion passes/fails) once votes are tallied.

Voice Voting

The Chair will state, "all those in favor" at which point members may altogether say "aye" or "yes", the Chair must then state, "all those opposed" and allow for opposing members to state "no" altogether. Keep in mind, failure to orally express a vote constitutes an affirmative (or "yes") vote.

Roll Call Votes

A roll call vote is generally used if there appears to be a division amongst members on an issue. This type of vote is especially preferable when making decisions on controversial items. The Chair or staff liaison may conduct the roll call. Each member will be identified, in any given order, followed by that member stating his/her vote.

Tie Votes

A tie vote is not a majority affirmative vote, and therefore is equivalent to a vote that has failed. The chair should publicly explain the effect of the tie vote for the public.

Abstentions

Abstentions count! A member who votes "abstain" is considered present and is counted toward the overall vote (not absent!). Abstentions are counted as a non-affirmative votes, and therefore act just like "no" votes (a motion may only pass with a majority affirmative votes).

What is the Difference? When to Abstain vs. When to Recuse

At times, it may not be clear to commission members whether they should participate/vote on an issue or not. Commissioners should keep in mind that by participating in discussion they have the power to influence the decision.

If a commission member has a defined conflict of interest, he/she must follow the steps for a recusal - see "*What to Do If You Have a Conflict Of Interest*" (Chapter 2). They will be counted as "absent."

If a commission member is unable to act in an unbiased manner, they should also consider recusal and leave the room entirely before discussion ensues. Simply abstaining from

voting may not be enough. Commissioners are encouraged to act on their conscience when such scenarios arise.

Abstentions should be rare and based on an inability to decide definitely to vote "yes" or "no" on a specific matter. Again, abstentions are counted toward the total vote and are non-affirmative. An abstention is not counted as "absent."

In the absence of a contrary statutory provision, the number of votes required to take action is a majority of a quorum.

Total Membership	Quorum	Number of Votes Cast	Majority Vote
5	3	5	3
		4	3
		3	2

Total Membership	Quorum	Number of Votes Cast	Majority Vote
7	4	7	4
		6	4
		5	3
		4	3

Voting requirements can vary depending on the action. A number of state law provisions impose voting rules requiring affirmative votes from more than a majority of a quorum in order for a legislative body to take action.

Total Membership	Quorum	Majority Vote of Total Membership	2/3rds Vote of Total Membership	4/5ths Vote of Total Membership
5	3	3	4	4

Total Membership	Quorum	Majority Vote of Total Membership	2/3rds Vote of Total Membership	4/5ths Vote of Total Membership
7	4	4	5	5

Requires approval by majority vote of total membership

- Resolutions and Ordinances
- Payment of money
- Action on appeal of EIR
- Rescinding or Amending Something Previously Adopted

Requires approval by 2/3rds vote of total membership:

- A resolution of necessity to initiate condemnation proceedings
- Enactment of general taxes
- Limit/close debate or nominations (removes ability of minority to discuss an item)
- Suspend the rules
- Add an emergency item (2/3rds vote of total membership or by unanimous vote if less than 2/3rds of the members are present)

Require approval by a 4/5th vote of total membership

- Urgency Ordinances and Urgency Interim Zoning Ordinances ("Moratoria")
- Certain exceptions to competitive bidding
- Override protests to sell real property
- Ordinance to convert a park to a different municipal purpose

The Rule of Necessity (Legally Required Participation): There are certain limited circumstances in which disqualified councilmembers may participate under the Rule of Necessity. The rule cannot be invoked merely because one member is absent or to break a tie. Participation by the smallest number of officials with a conflict that are "legally required" in order for the decision to be made shall be reinstated by lot or some other impartial method. Whatever method is used, all disqualified officials must participate in the random selection and all must have an equal likelihood of being chosen.

SUBCOMMITTEES

Commissions may, from time to time, form subcommittees to focus on specific issues and make the work of the group more efficient. Subcommittees are useful when an issue needs to be studied in detail or when outside expertise is needed. The work and recommendations of subcommittees must always come back to the full commission for approval in a public meeting. Subcommittee reports may be heard during the communications item of commission agendas.

Subcommittees must be made up of less than a quorum of the members of the commission. Subcommittees may not last longer than one year. Subcommittee meetings for continuing or "standing" subcommittees with a continuing subject matter jurisdiction are considered public meetings and must comply with the Brown Act; commissions are not authorized to create "standing" subcommittees. For this reason, it is important that subcommittees report back to the full commission within a year in order for the commission to dissolve the subcommittee or to refine the scope and create a new committee.

Guidelines for Subcommittees

- Clearly define the purpose
- Set deadlines for reports and establish sunset provisions
- Limit the number of members
- Involve all sides of the issue
- Appoint a chairperson
- Require periodic reports

MINUTES AND RECORDING MEETINGS

Meeting Minutes

Minutes of each meeting of a city commission are usually recorded by the staff liaison, and sometimes a designated secretary. The minutes serve as a permanent record of the group's actions, testimony and opinions and they are forwarded to the City Council as input and background for Council decisions.

All local bodies must take and keep minutes of its meetings. Minutes should contain at least the following information:

- The time the meeting was called to order
- The names of the members attending the meeting
- A brief summary of the action taken on each item and the vote. (Note the names of each member who voted "Aye", "No," or "Abstained" if the vote is not unanimous, as well as absent/recused members)
- The names of those people who spoke on each item
- The time the meeting was adjourned

There are three types of minutes –

Action Minutes: Reflect the motion, the maker and second;
Summary Minutes: Reflects the above action plus a brief summary of the discussion;
Detailed Minutes: Reflects actions plus a record of the entire discussion.

The City of Davis requires that all commissions prepare "summary minutes," however there are times when "action minutes" are appropriate. Summary minutes are exactly what they sound like: concise summaries of the thought process that lead to decisions/motions made by the commission. Minutes should only capture significant points made by the commission, and not every word. Individual comments that are not relevant to the item, are not already reflected in that commission members' vote on the item, or not pursued by the commission as a whole should not be included in the minutes.

Approval Process

The staff liaison will agendize the draft minutes for the commission to review and approve. It is important for members of city commissions to review minutes and make corrections if needed so that the approved minutes accurately reflect the work of the group. Once approved, the staff liaison will forward the finalized minutes to the City Council as an informational item.

<u>Correction of Minutes</u>

Corrections to minutes should be made at the meeting when the minutes are brought forward for adoption. Corrections require a motion to amend, second and a majority vote, and, if approved, are noted in the minutes of the current meeting. Unless specifically requested by the commission, it is not necessary for staff to return to the commission with minor corrections made to minutes. The staff liaison may make the corrections per the commission's direction, and then forward the finalized minutes to the Council.

Recording Meetings

Televised Meetings

As part of their franchise agreement with the City of Davis, Comcast and AT&T provide the city with channels on the local cable television systems as a means for providing municipal information to the citizens of Davis. By direction of the City Council, meetings of the City Council and the Planning Commission are televised on a regular basis. In addition, other commission meetings are televised on a special request basis.

Requesting a Meeting be Televised

Commissions that are not televised on a regular basis may request a meeting be televised. The commission should be certain that the meeting would attract a wide interest in the community before requesting that it be televised. The Chair of the commission should direct the staff liaison to make a request to televise the meeting. The request must be made to the media services program a minimum of two weeks in advance. All televised meetings take place in the Community Chambers.

COMMISSION RECORDS

Public Records

All documents generated in the administration of a board are considered official records of the City of Davis. All agendas, minutes, reports, communications, audio recordings, and any other related material, should be kept in an organized manner and retained in accordance with the Davis Records Retention Schedule. Any materials distributed to the commission before, during, or after any meeting are public records and must be made available to the public upon request. Commission minutes must be retained permanently.

General Correspondence

Any/all correspondence distributed to the commission should be forwarded to the staff liaison and retained in accordance with the City of Davis' Records Retention Schedule. Public correspondence received by the commission are public records and must be made available upon request.

[COMMISSION NAME] WORK PLAN		
Goals (Relevant Council Goals, Objectives and/or Tasks)	**Plan for Discussion/Anticipated Actions**	**Timeline/Status**
This box should be used to identify goals of the commission for the next 1 to 2 years. The goal should be clearly identified as a City Council Goal or Commission-specific goal.	This box should contain a brief description of the commission's plan for future discussion topics and/or actions to achieve the identified goal.	This box can be used as a checklist for the commission's progress in achieving its objective, or as a long range calendar. Some goals/objectives may be ongoing or occur as items arise; these should be identified in the work plan, but may not have a specific timeline associated. Commissions may wish to keep a record of accomplished goals for each 2-year cycle, in which case this box should identify the status as completed.

2019

Brown Act HANDBOOK

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

- Summary and Discussion of the Major Provisions of the Brown Act
- Text of the Ralph M. Brown Act
- Updated including changes effective January 1, 2019

RWG LAW
RICHARDS WATSON GERSHON
Representing California public and private entities since 1954

Table of Contents

INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's open meeting law for local governments – the Ralph M. Brown Act, including rules about calling and holding various types of meetings and closed sessions, as well as guidelines for how to avoid serial meetings. The second part contains the complete text of the Brown Act. This Handbook is designed for local government officials and staff and we hope you will find it useful. Should you have any questions about the information included in this Handbook, please do not hesitate to contact us.

Richards, Watson & Gershon

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

Summary of the Major Provisions and Requirements of the Ralph M. Brown Act

The Ralph M. Brown Act, more commonly known as the "Brown Act," is California's "sunshine" law for local government. The Brown Act is found in the California Government Code commencing with Section 54950. In a nutshell, the Brown Act requires local government business to be conducted at open and public meetings, except in certain limited situations. This paper briefly summarizes and discusses the major provisions of the Brown Act.

I. APPLICATION OF BROWN ACT TO "LEGISLATIVE BODIES"

The requirements of the Brown Act apply to "legislative bodies" of local governmental agencies. The term "legislative body" is defined to include the governing body of a local agency (e.g., the city council or the board of supervisors) and any commission, committee, board, or other body of the local agency, whether permanent or temporary, decision making or advisory, that is created by formal action of a legislative body. § 54952(a)-(b).

Standing committees of a legislative body, that have either "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body, are also subject to the requirements of the Brown Act. Some common examples include the finance, personnel, or similar policy subcommittees of a legislative body. Standing committees exist to make routine, regular recommendations on a specific subject matter. These committees continue to exist over time and survive resolution of any one issue or matter. They are also a regular part of the governmental structure.

The Brown Act does not apply to "ad hoc" committees comprised solely of members of the legislative body that are less than a quorum of the body, provided these committees do not have a "continuing subject matter jurisdiction," or a meeting schedule fixed by formal action of the legislative body. Such ad hoc committees are purely advisory; they generally serve only a limited or single purpose, are not perpetual, and are dissolved when their specific task is completed.

Advisory and standing committees, but not ad hoc committees, are required to have agendas, and to have their agendas posted at least 72 hours in advance of their meetings. If this is done, the meeting is considered to be a regular meeting for all purposes. If the agenda is not posted at least 72 hours in advance, the meeting must be treated as a special meeting, and all of the limitations and requirements for special meetings apply, as discussed later.

The governing boards of some private corporations, limited liability companies, and private entities may be subject to the Brown Act under certain circumstances. A private entity's governing board constitutes a legislative body within the meaning of the Brown Act if either of the following applies: (i) the private entity is created by an elected legislative body to exercise lawfully delegated authority of the legislative body; or (ii) the private entity receives funds from a local agency and its governing board includes a member of the legislative body of the local agency who was appointed by the legislative body to the governing board as a full voting member. § 54952(c).

The Brown Act also applies to persons who are elected to serve as members of a legislative body of a local agency even before they assume the duties of office. § 54952.1. Under this provision, the statute is applicable to newly elected, but not-yet-sworn-in, members of the legislative body.

II. DEFINITION OF "MEETING"

The central provision of the Brown Act requires that all "meetings" of a legislative body be open and public. The Brown Act defines the term "meeting" very broadly, § 54952.2, and encompasses almost every gathering of a majority of legislative body members, including:

Any congregation of a majority of the members of a legislative body at the same time and location . . . to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body.

In plain English, this definition means that a meeting is any gathering of a majority of council members, board of directors, or other applicable legislative body, to hear, discuss or deliberate any item of local agency business or potential local agency business. It is important to emphasize that a meeting occurs if a majority gathers to hear, discuss or deliberate on a matter and not just voting or taking action on the issue.

III. EXCEPTIONS TO MEETING REQUIREMENT

There are six types of gatherings that are not subject to the Brown Act. We commonly refer to these exceptions as: (1) the individual contact exception; (2) the seminar or conference exception; (3) the community meeting exception; (4) the other legislative body exception; (5) the social or ceremonial occasion exception; and (6) the standing committee exception. Unless a gathering of a majority of the members of a legislative body falls within one of the exceptions discussed below, even if a majority of members are merely in the same room listening to a discussion of local agency business, they will be participating in a meeting within the meaning of the Brown Act that requires notice, an agenda, and a period for public comment.

A. The Individual Contact Exception

Conversations, whether in person, by telephone or other means, between a member of a legislative body and any other person do not constitute a meeting under the Brown Act. § 54952.2(c)(1). However, such contacts may constitute a "serial meeting" (discussed below) in violation of the Brown Act, if the individual also makes a series of individual contacts with other members of the legislative body, and communications with these other members are used to "discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

B. The Seminar or Conference Exception

Attendance by a majority of the legislative body at a seminar, conference, or similar educational gathering is generally exempted from Brown Act requirements. § 54952.2(c)(2). However, in order to qualify under this exception, the seminar or conference must be open to the public and must involve issues of general interest to the public or to local agencies. Attendance at a California League of Cities or California Contract Cities seminar is an example of an educational gathering that fulfills these requirements. However, as with many of the exceptions, this exception will not apply if a majority of legislative body members discuss among themselves items of specific business relating to their own local agency other than as part of the scheduled program.

C. The Community Meeting Exception

The community meeting exception allows a majority of legislative body members to attend privately sponsored neighborhood meetings, town hall forums, chamber of commerce lunches or other community meetings at which issues of local interest are discussed. § 54952.2(c)(3). In order to fall within this exception, however, the community meeting must satisfy specific criteria. First, the community meeting must be "open and publicized." Therefore, a homeowners' association meeting restricted to the residents of a particular development and only publicized to those residents cannot be attended by a majority of the legislative body without following the Brown Act requirements because the meeting does not qualify for the exception. And again, for those meetings that fall within the community meeting exception, a majority of legislative body members cannot discuss among themselves items of business of their own local agency other than as part of the scheduled program.

D. The Other Legislative Body Exception

This exception allows a majority of members of any legislative body to attend open and noticed meetings of other legislative bodies of their local agency, or of another local agency, without treating such attendance as a meeting of the body. § 54952.2(c)(4). Of course, the legislative body members are prohibited from discussing items of business of their local agency among themselves other than as part of the scheduled meeting.

E. The Social or Ceremonial Occasion Exception

As has always been the case, the Brown Act does not apply to attendance by a majority of the legislative body members at purely social or ceremonial occasions. § 54952.2(c)(5). This exception only applies if a majority of legislative body members do not discuss among themselves items of business of their local agency.

F. The Standing Committee Exception

The standing committee exception allows members of a legislative body, who are not members of a standing committee of that body, to attend an open and noticed meeting of the committee without making the gathering a meeting of the full legislative body itself. § 54952.2(c)(6). If a majority of the legislative body is created by the attendance of the additional members, the legislative body members who are not members of the standing committee may attend only as "observers." This means that the noncommittee members of the legislative body should not speak at the standing committee's meeting, sit in their usual seat on the dais, or otherwise participate in the meeting. It is generally recommended that, if a standing committee meeting is likely to be attended by other legislative body members, then the meeting should be agendized as a meeting of the whole legislative body. This will allow full participation by all members of the legislative body.

IV. PERMITTED LOCATIONS OF MEETINGS AND TELECONFERENCING

The Brown Act generally requires all meetings of a legislative body to occur within the boundaries of the local agency. § 54954(b). There are limited exceptions to this rule, however, such as allowing meetings with a legislative body of another local agency in that agency's jurisdiction. Meetings held outside of a local agency's boundaries pursuant to an exception still must comply with agenda and notice requirements, as discussed below.

"Teleconferencing" may be used by members of a legislative body as a way to participate fully in the meeting from remote locations. § 54953(b). If a member participates in a meeting via teleconferencing, the following requirements apply: (1) the remote location must be connected to the main meeting location by telephone, video or both; (2) the notice and agenda of the meeting must identify the remote location; (3) the remote location must be posted and accessible to the public; (4) all votes must be by roll call; and (5) the meeting must comply with the Brown Act, which includes allowing participation by members of the public present in remote locations. A quorum of the legislative body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction. The teleconferencing rules only apply to members of the legislative body. Staff members, attorneys, or consultants may participate remotely without following the posting and public access requirements of the teleconferencing rules.

V. ADA COMPLIANCE

Pursuant to Section 54953.2, all meetings of a legislative body, other than closed session meetings or parts of meetings involving a closed session, are required to be held in a location and conducted in a manner that complies with the Americans with Disabilities Act of 1990. In addition, if requested, the agenda and documents in the agenda packet shall be made available in alternative formats to persons with a disability. § 54954.1. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the meeting. § 54954.2.

VI. SIMULTANEOUS OR SUCCESSIVE MEETINGS

A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or successively, only if a clerk or a member of the convened legislative body announces the following prior convening the simultaneous or successive meeting:

1) There is a subsequent legislative body;

2) The compensation or stipend, if any, each member may receive as a result of the multiple meetings; and

3) The form of that compensation or stipend will be provided.

The compensation and stipend is not required to be announced if it is listed in a statute without additional compensation authorized by the local agency, and in any case, the announced compensation must not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of his or her official duties. § 54952.3.

VII. SERIAL MEETINGS

In addition to regulating all gatherings of a majority of the members of a legislative body, the Brown Act also addresses certain contacts between individual members of the legislative body. On the one hand, the Brown Act specifically provides that nothing in the Act is intended to impose requirements on individual contacts or conversations between a member of a legislative body and any other person. § 54952.2(c)(1). This provision even applies to individual contacts between two members of the legislative body (the individual contact exception to the "meeting" described above). Despite this exception, however, the Brown Act prohibits 'serial meetings.' § 54952.2(b)(1).

A serial meeting is a series of meetings or communications, either in person or by other means, between individual members of the legislative body in which ideas are exchanged among a majority of a legislative body. A serial meeting can occur even though a majority of legislative body members never gather in a room at the same time, and it typically occurs in one of two ways. The first is when a staff member, a legislative body member, or some other person individually contacts a majority of legislative body members and shares ideas among the majority ("I've talked to members A and B and they will vote 'yes.' Will you?"). Alternatively, member A calls member B, who then calls member C, and so on, until a majority of the legislative body has discussed or deliberated or has taken action on the item of business.

The prohibition against serial meetings does not, however, prohibit communications between staff and legislative body members for the purpose of answering questions or providing information regarding a matter that is within the subject matter jurisdiction of the local agency, as long as the staff person does not communicate with other members of the legislative body, the comments or positions of any other member of the legislative body. § 54952.2(b)(2). Observing the following guidelines can avoid inadvertent violation of the serial meeting rule.

A. Contacts with Staff

Staff can inadvertently become a conduit among a majority of a legislative body in the course of providing briefings on items of local agency business. Originally, the California Court of Appeal held that staff briefings of individual city council members do not constitute an illegal serial meeting under the Brown Act unless there was additional evidence that: (1) staff acted as a personal intermediary for other members of the legislative body; and (2) the meetings led to a collective concurrence among members of the legislative body. Following that decision, the state legislature amended Government Code Section 54952.2 in 2008, effective in 2009, to further clarify that staff briefings of individual city council members for the purpose of answering questions or providing information regarding an item of business do not constitute an illegal serial meeting under the Brown Act as long as a staff person does not communicate the comments or positions of a member of the legislative body to other members. Staff briefings must therefore be handled carefully. To avoid having a staff briefing become a serial meeting:

- Staff briefings of members of the legislative body should be "unidirectional" when done on an individual basis for a majority of the legislative body. This means that information should flow from staff to the member, and the member's participation should be limited to asking questions and acquiring information. Otherwise, if multiple members separately give staff direction thereby causing staff to shape or modify their ultimate recommendations in order to reconcile the views of a majority of the members, a violation might occur.

- A legislative body member should not ask staff to describe the views of any other members of the legislative body, and staff should not volunteer those views if known.

- Staff may present their views to a legislative body member during an individual contact, but staff should not ask for that member's views unless it is absolutely clear that staff is not discussing the matter with a majority of the legislative body.

B. Contacts with Constituents, Developers and Lobbyists

A constituent, developer, or lobbyist can also inadvertently become an intermediary among a majority of members of a legislative body thereby creating an illegal serial meeting in violation of the Brown Act. Such persons' unfamiliarity with the requirements of the Brown Act aggravate this potential problem because they may expect a legislative body member to be willing to commit to a position in a private conversation in advance of a meeting. To avoid violations arising from contacts with constituents, developers and lobbyists:

- State the ground rules "up front." Ask if the person has talked, or intends to talk, with other members of the legislative body about the same subject. If the answer is "yes," then make it clear that the person should not disclose the views of other legislative body member(s) during the conversation.

- Explain to the person that you will not make a final decision on a matter prior to the meeting. For example: "State law prevents me from giving you a commitment outside a noticed meeting. I will listen to what you have to say and give it consideration as I make up my mind."

- Do more listening and asking questions than expressing opinions. If you disclose your thoughts about a matter, counsel the person not to share them with other members of the legislative body.

- Be especially careful with discussions about matters involving "quasi-judicial" land use decisions such as subdivision maps, site development plans, conditional use permits, or variances. Consult with your city attorney or legal counsel before the meeting in order to avoid any potential problems involving illegal prejudice against the project or illegally receiving evidence about the project outside of the administrative record.

C. Contacts with Fellow Members of the Same Legislative Body

Direct contacts concerning local agency business with fellow members of the same legislative body – whether through face-to-face or telephonic conversations, notes, letters, online exchanges, e-mail with or to staff members – are the most obvious means by which an illegal serial meeting can occur. This is not to say that a member of a legislative body is precluded from discussing items of local agency business with another member of that legislative body outside of a meeting; as long as the communication does not involve a majority of the legislative body, no "meeting" has occurred. There is, however, always the risk that one participant in the communication will disclose the views

of the other participant to a third or fourth legislative body member, creating the possibility of a discussion of an item of business outside a noticed public meeting. Therefore, avoid discussing city business with a majority of the members of your legislative body, and communicating the views of other legislative body members outside a meeting.

These suggested rules of conduct may seem unduly restrictive and impractical, and may make acquisition of important information more difficult or time-consuming. Nevertheless, following them will help assure that your conduct comports with the Brown Act's goal of achieving open government. If you have questions about compliance with the Act in any given situation, you should seek advice from your city attorney or legal counsel. Adherence to the foregoing guidelines is not a substitute for securing advice from your legal counsel.

VIII. NOTICE, AGENDA AND REPORTING REQUIREMENTS

A. Time of Notice and Content of Agenda

Two key provisions of the Brown Act which ensure the public's business is conducted openly are the requirements that legislative bodies publicly post agendas prior to their meetings, (§§ 54954.2, 54955, 54956, and 54957.5) and that no action or discussion may occur on items or subjects not listed on the posted agenda (§ 54954.2). The limited exceptions to the rule against discussing or taking action not on a posted agenda are discussed further below.

Legislative bodies, except advisory committees and standing committees, are required to establish a time and place for holding regular meetings. § 54954(a). A "regular" meeting is a meeting that occurs on the legislative body's established meeting day. Agendas for a regular meeting must be publicly posted 72 hours in advance of the meeting in a place that is freely accessible to the public. Agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting. § 54954.2(a). The description should inform the public of the "essential nature" of the matter, but need not exceed 20 words. *San Diegans for Open Government v. City of Oceanside*, 4 Cal. App. 5th 637 (2016).

Courts will uphold a challenge to the sufficiency of an agenda item description when the description provides fair notice of what the agency will consider. The *San Diegans for Open Government* case provides an example of a sufficient agenda description that provides fair notice. In *San Diegans for Open Government*, the Oceanside City Council approved a subsidy agreement with a hotel developer using the following agenda item description:

> Adoption of a resolution to approve: 1. An Agreement Regarding Real Property (Use Restrictions) between the City of Oceanside and SD Malkin Properties Inc. to guarantee development and use of the

> property as a full service resort consistent with the entitlements for the project; 2. An Agreement Regarding Real Property to provide a mechanism to share Transit Occupancy Tax (TOT) generated by the Project; 3. A Grant of Easement to permit construction of a subterranean parking garage under Mission Avenue; 4. A report required by AB 562 prepared by Paul Marra of Keyser Marston and Associates documenting the amount of subsidy provided to the developer, the proposed start and end date of the subsidy, the public purpose of the subsidy, the amount of the tax revenue and jobs generated by the project; and 5. A License Agreement to permit construction staging for the project on a portion of Lot 26.

The court ruled that this agenda description complied with the requirements of Government Code Section 54954.2 because the agenda description expressly gave the public notice that the council would consider a fairly substantial development of publicly owned property as a hotel, that the City would share the transient occupancy tax generated by the project, and that the transaction would involve a subsidy by the City. Additional information, while helpful, was not necessary to provide fair notice of the essential nature of the action under state law. The Court found that the language of the agenda, considered as a whole, provided more than a "clue" that the City planned to provide the developer with a substantial and ongoing financial subsidy in exchange for the project.

In contrast, in *Hernandez v. Town of Apple Valley*, 7 Cal. App. 5th 194 (2017), the court held that the Apple Valley Town Council's agenda description was insufficient. There, the Apple Valley Town Council adopted three resolutions that called for a special election related to an initiative to adopt a commercial specific plan and the filing of arguments and rebuttal arguments for and against the initiative. In addition, the Town Council adopted a Memorandum of Understanding ("MOU") that authorized the acceptance of a gift from an interested party, Wal-Mart, to pay for the special election. The agenda description for the matter read "Wal-Mart Initiative Measure" and included a recommendation for action that read "[p]rovide direction to staff."

The court reiterated that the Brown Act requires that each item of business be placed on the agenda. Specifically, the court highlighted that nothing in the agenda description, or even in the agenda packet, indicated that the Town Council was going to consider an MOU to accept a gift from Wal-Mart to pay for a special election to pass the initiative. The court concluded that the City violated the Brown Act by omitting the MOU from the agenda description because the omission meant that the plaintiff was given no notice of the item of business.

Agendas must also be posted on the local agency's website, if one exists, for City Council meetings, and meetings of any other legislative body where some members are City Council members and are compensated for their appearance. While the language of the 72 hour posting requirement appears absolute, the California Attorney General opined that technical difficulties, such as a power failure, cyber-attack, or other third-party interference that prevents a local agency from posting its agenda on its website for the full 72 hours will not necessarily preclude the legislative body from lawfully holding

its meeting. 99 Ops. Cal. Atty. Gen. 11 (2016). Whether a public meeting may continue as scheduled requires a fact specific analysis, that turns on whether the local agency has otherwise "substantially complied" with the Brown Act's agenda posting requirements by properly posting a physical agenda and making other "reasonably effective efforts" (such as making the agenda available on social media or some other alternative website) to notify the public of the meeting.

Please note that the adoption of a CEQA document, such as an environmental impact report or a negative declaration, by a Planning Commission or a City Council is a distinct item of business separate from the item approving the project and must be expressly described in an agenda.

A "special" meeting is a meeting that is held at a time or place other than the time and place established for regular meetings. For special meetings, the "call and notice" of the meeting and the agenda must be posted, including in some cases on the local agency's website, at least 24 hours prior to the meeting. § 54956. Additionally, each member of the legislative body must personally receive written notice of the special meeting either by personal delivery or by "any other means" (such as facsimile, e-mail or U.S. mail) at least 24 hours before the time of the special meeting, unless they have previously waived receipt of written notice. Members of the press (including radio and television stations) and other members of the public can also request written notice of special meetings and, if they have, then that notice must be given at the same time notice is provided to members of the legislative body.

An "emergency" meeting may be called to address certain emergencies, such as a terrorist act or crippling disaster, without complying with the 24-hour notice requirement. Certain requirements apply for notifying the press and for conducting closed sessions as part of those meetings, and except as specified, all other rules governing special meetings apply. § 54956.5.

Both regular and special meetings may be adjourned to another time. Notices of adjourned meetings must be posted on the door of the meeting chambers where the meeting occurred within 24 hours after the meeting is adjourned. § 54955. If the adjourned meeting occurs more than five days after the prior meeting, a new agenda for that adjourned meeting must be posted 72 hours in advance of the adjourned meeting. § 54954.2(b)(3).

The Brown Act requires local agencies to mail the agenda or the full agenda packet to any person making a written request no later than the time the agenda is posted or is delivered to the members of the body, whichever is earlier. A local agency may charge a fee to recover its costs of copying and mailing. Any person may make a standing request to receive these materials, in which event the request must be renewed annually. Failure by any requestor to receive the agenda does not constitute grounds to invalidate any action taken at a meeting. § 54954.1.

B. Action and Discussion on Non-agenda Items

The Brown Act also ensures the public's business is conducted openly by restricting a legislative body's ability to deviate from posted agendas. The statute affords a legislative body limited authority to act on or discuss non-agenda items at regular meetings, but forbids doing so at special meetings.

As a general rule, a legislative body may not act on or discuss any item that does not appear on the agenda posted for a regular meeting. § 54954.2. This rule does not, however, preclude a legislative body from acting on a non-agenda item that comes to the local agency's attention subsequent to the agenda posting which requires immediate action. In order to utilize this exception, the legislative body must make findings of both components of the exception by a two-thirds vote of those present (by unanimous vote if less than two-thirds of the body is present). This means that if four members of a five-member body are present, three votes are required to add the item; if only three are present, a unanimous vote is required. In addition, an item not appearing on an agenda may be added if the legislative body determines by a majority vote that an emergency situation exists. For purposes of this exception, the term "emergency situation" refers to work stoppages or crippling disasters that severely impair public health, safety, or both.

In addition to the two general exceptions discussed above, a legislative body may also discuss non-agenda items at a regular meeting under the following five additional exceptions:

- Members of the legislative body or staff may briefly respond to statements made or questions posed by persons during public comment periods;
- Members of the legislative body or staff may ask a question for clarification, make a brief announcement or make a brief report on their own activities;
- Members of the legislative body may, subject to the procedural rules of the body, provide a reference to staff or other resources for factual information;
- Members of the legislative body may, subject to the procedural rules of the body, request staff to report back to the legislative body at a subsequent meeting concerning any matter; and
- Members of the legislative body may, subject to the procedural rules of the body, take action to direct staff to place a matter of business on a future agenda.

Therefore, spending a few minutes to discuss whether a matter should be placed on a future agenda or asking staff procedural questions is permissible. *Cruz v. City of Culver City*, 2 Cal.App. 5th 239 (2016). The legislative body may not, however, discuss non-agenda items to any significant degree. This means there should not be long or wide-ranging question and answer sessions on non-agenda items between the legislative body and the public, or between the legislative body and staff. It is important to follow

these exceptions carefully and construe them narrowly to avoid tainting an important and complex action by a non-agendized discussion of the item.

The Brown Act contains even more stringent regulations to restrict action on and discussion of non-agenda items at special meetings. In particular, the statute mandates that only business that is specified in the "call and notice" of the special meeting may be considered by the legislative body. § 54956. Notwithstanding, a special meeting may not be called to discuss compensation of a local agency executive. § 54956(b).

C. Reporting of Actions

The Brown Act mandates the public reporting of individual votes or abstentions by members of legislative bodies on any given motion or action. This requirement may be satisfied in most situations by reporting the individual vote or abstention of each member in the minutes of a meeting. § 54953. As of January 1, 2017, the Brown Act also requires that the legislative body orally report a summary of recommendations made with respect to the salary, salary schedule, or compensation paid to a local agency executive. The legislative body must issue the report at the same meeting in which the final action on compensation is being considered. § 54953(c).

IX. PUBLIC PARTICIPATION

A. Regular Meetings

The Brown Act mandates that every agenda for a regular meeting provide an opportunity for members of the public to directly address the legislative body on any matter that is within the subject matter jurisdiction of the legislative body. § 54954.3(a). In addition, the Brown Act requires the legislative body to allow members of the public to comment on any item on the agenda either before or during the body's consideration of that item. § 54954.3(a).

Some local agencies accomplish both requirements by placing a general audience comment period at the beginning of the agenda where the public can comment on both agenda and non-agenda items. Others provide public comment periods as each item or group of items comes up on the agenda, and then leaves the general public comment period to the end of the agenda. Either method is permissible, though public comment on public hearing items must be taken during the hearing.

The Brown Act allows a legislative body to preclude public comments on an agenda item in one limited situation – where the item was considered by a committee, composed solely of members of the body, that held a meeting where public comments on that item were allowed. So, if the legislative body has standing committees (which are required to have agendized and open meetings with an opportunity for the public to comment on agenda items), and the committee has previously considered an item, then at the time the item comes before the full legislative body, the body may choose not to take additional public comments on that item. However, if the version presented to the full

legislative body is different from the version presented to, and considered by, the committee, then the public must be given another opportunity to speak on that item at the meeting of the full body. § 54954.3.

B. Public Comments at Special Meetings

The Brown Act requires that agendas for special meetings provide an opportunity for members of the public to address the legislative body concerning any item listed on the agenda before or during the body's consideration of that item. § 54954.3(a). Unlike regular meetings, though, the legislative body does not have to allow public comment on non-agenda matters at a special meeting.

C. Limitations on the Length and Content of Public Comments

A legislative body may adopt reasonable regulations limiting the total amount of time allocated to each person for public testimony. Typical time limits restrict speakers to three or five minutes. If an individual utilizes a translator to give testimony and simultaneous translation equipment is not used, the legislative body must allot at least twice the standard amount of time to the speaker. A legislative body may also adopt reasonable regulations limiting the total amount of time allocated for public testimony on legislative matters, such as a zoning ordinance or other regulatory ordinance. § 54954.3(b). However, setting total time limits per item for any quasi-judicial matter, such as a conditional use permit application, is not recommended because the time restriction could violate the due process rights of those who were not able to speak to the body during the time allotted.

The Brown Act precludes a legislative body from prohibiting public criticism of the policies, procedures, programs, or services of the local agency or the acts or omissions of the body. § 54954.3(c). This restriction does not mean that a member of the public may say anything during public testimony. If the topic of the public's comments falls outside the subject matter jurisdiction of the local agency, the legislative body may stop a speaker's comments.

A legislative body also may adopt reasonable rules of decorum that preclude a speaker from disrupting, disturbing or otherwise impeding the orderly conduct of its meetings. § 54954.3(b). The right to publicly criticize a public official does not include the right to slander that official, though the line between criticism and slander is often difficult to determine in the heat of the moment. Care must be given to avoid violating the free speech rights of speakers by suppressing opinions relevant to the business of the legislative body.

Finally, in some circumstances, the use of profanity may serve as a basis for stopping a speaker. It will depend, however, upon what profane words or comments are made and the context of those comments. Therefore, no one should be ruled out of order for profanity unless the language both is truly objectionable and causes a disturbance or disruption in the proceeding.

D. Additional Rights of the Public

The Brown Act grants the public the right to videotape or broadcast a public meeting, as well as the right to make a motion picture or still camera record of such meeting. § 54953.5(a). A legislative body may prohibit or limit recording of a meeting, however, if the body finds that the recording cannot continue without noise, illumination, or view obstruction that constitutes, or would constitute, a disruption of the proceedings. § 54953.6.

Any audio or videotape record of an open and public meeting that is made, for whatever purpose, by or at the direction of the local agency is a public record and is subject to inspection by the public consistent with the requirements of the Public Records Act. § 54953.5(b). The local agency must not destroy the tape or film record for at least 30 days following the date of the taping or recording. Inspection of the audiotape or videotape must be made available to the public for free on equipment provided by the local agency.

The Brown Act requires written material distributed to a majority of the body by any person to be provided to the public without delay. This rule is inapplicable, to attorney-client memoranda, the confidentiality of which was affirmed by the California Supreme Court in *Roberts v. City of Palmdale*, 5 Cal. 4th 363 (1993). However, if non-privileged material is distributed during the meeting and prepared by the local agency, it must be available for public inspection at the meeting. If it is distributed during the meeting by a member of the public, it must be made available for public inspection after the meeting. § 54957.5(c).

If material related to an agenda item is distributed to a majority of the body less than 72 hours prior to an open session of a regular meeting, the writing must be made available at the same time for public inspection at a public office or location that has been designated in advance for such purpose. Each local agency must list the address of the designated office or location on the agendas for all meetings of the legislative body of that agency. § 54957.5(b). Although this Brown Act provision technically requires an agency to list the designated office address on closed session meeting agendas, it does not require an agency to make such closed session documents and materials available for public inspection.

A local agency may also post all documents made available for public inspection pursuant to Section 54957.5(b) on the agency's Internet Web site. However, a local agency may not post the writings to its website in lieu of designating a public office or location for inspection of physical copies of the documents.

We recommend that local agencies implement the following procedures to comply with Section 54957.5(b):

- Place a binder at the agency's principal place of business next to the public counter agenda packet that identifies the contents as follows: "Disclosable public documents related to an open session agenda item on

the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On the agenda template for all meetings, there should be a standard footer or statement that indicates the following: Any disclosable public writings related to an open session item on a regular meeting agenda and distributed by the [AGENCY] to at least a majority of the [LEGISLATIVE BODY] less than 72 hours prior to that meeting are available for public inspection at the _____ Counter at [AGENCY'S PLACE OF BUSINESS] located at [ADDRESS] and [optional] the _____ Counter at the _____ Library located at [LIBRARY ADDRESS] during normal business hours. [Optional] In addition, the Agency may also post such documents on the Agency's Web site at [WEB SITE ADDRESS].

- On the [AGENCY'S] Web site, create a subfolder under the agenda packet folder that identifies the contents of the subfolder as follows: "Disclosable public documents related to an open session agenda item on the _____ Agenda Packet distributed by the [AGENCY] to a majority of the [LEGISLATIVE BODY] less than 72 hours prior to the meeting."

- On all documents made available for public inspection pursuant to Section 54957.5(b), make a notation of the date when distributed to at least a majority of the legislative body and placed in the binder at agency's place of business, [optional] the Library, or [optional] on the agency's Web site.

- Charge customary photocopying charges for copies of such documents.

One problem left unaddressed by Section 54957.5(b) is what to do when written materials are distributed directly to a majority of the legislative body without knowledge of staff, or even without the legislative body members knowing that a majority has received it. The law still requires these materials to be treated as public records. Thus, it is a good idea for at least one member of the legislative body to ensure that staff gets a copy of any document distributed to members of the legislative body so that copies can be made for the local agency's records and for members of the public who request a copy.

X. CLOSED SESSIONS

The Brown Act allows a legislative body to convene a "closed session" during a meeting in order to meet privately with its advisors on specifically enumerated topics. Sometimes people refer to closed sessions as "executive sessions," which is a holdover term from the statute's early days. Examples of business that may be conducted in closed session include personnel actions and evaluations, threats to public safety, labor negotiations, pending litigation, real estate negotiations, and consideration of a response to an audit report. §§ 54956.8, 54956.9, 54957, 54957.6, 54957.75. Political sensitivity of an item is not a lawful reason for a closed session discussion.

The Brown Act requires that closed session business be described on the public agenda. Moreover, there is a "safe harbor" for using prescribed language to describe closed sessions in that legal challenges to the adequacy of the description are precluded when such language is used. § 54954.5. This so-called "safe harbor" encourages many local agencies to use a very similar agenda format, especially in light of a California Court of Appeal ruling that a local agency substantially complied with the Brown Act's requirement to describe closed session agenda items even though the notice referred to the wrong subsection of Section 54956.9. *Castaic Lake Water Agency v. Newhall County Water District*, 238 Cal.App. 4th 1196 (2015). Audio recording of closed sessions is not required unless a court orders such recording after finding a closed session violation. § 54960.

Closed sessions may be started in a location different from the usual meeting place as long as the location is noted on the agenda and the public can be present when the meeting first begins. Moreover, public comment on closed session items must be allowed before convening the closed session.

After a closed session, the legislative body must reconvene the public meeting and publicly report certain types of actions if they were taken, and the vote on those actions. § 54957.1. There are limited exceptions for specified litigation decisions, and to protect the victims of sexual misconduct or child abuse. Contracts, settlement agreements or other documents that are finally approved or adopted in closed session must be provided at the time the closed session ends to any person who has made a standing request for all documentation in connection with a request for notice of meetings (typically members of the media) and to any person who makes a request within 24 hours of the posting of the agenda, if the requestor is present when the closed session ends. § 54957.1.

One perennial area of confusion is whether a legislative body may discuss the salary and benefits of an individual employee (such as a city manager) as part of a performance evaluation session under Section 54957. It may not. However, the body may designate a negotiator or negotiators, such as two members of a five-member legislative body, to negotiate with that employee, and then meet with the negotiator(s) in closed session under Section 54957.6 to provide directions on salary and compensation issues. The employee in question may not be present in such a closed session. The Brown Act prohibits attendees from disclosing confidential information obtained during a closed session, unless the legislative body authorizes the disclosure. Violations can be addressed through injunctions, disciplinary action, and referral to the grand jury. § 54963.

XI. ENFORCEMENT

There are both civil remedies and criminal misdemeanor penalties for Brown Act violations. The civil remedies include injunctions against further violations, orders nullifying any unlawful action, orders determining that an alleged act violated the Brown Act, orders determining the validity of any rule to penalize or discourage the expression of a member of the legislative body, and remedies for breaching closed session confidences. §§ 54960, 54960.1, 54960.2, 54963.

The procedures for claiming there was a Brown Act violation vary depending upon what the complaining party is seeking. If the complaining party is seeking to invalidate an action based on a violation of the Brown Act, the procedures for doing so are set forth in Section 54960.1, as summarized below. If the complaining party is merely seeking a determination that a Brown Act violation occurred or desires the court to impose an order preventing further violations, the procedures for doing so are set forth in Section 54960.2, also as summarized below.

Under Section 54960.1, prior to filing suit to obtain a judicial determination that an action is null and void because of an alleged Brown Act violation, the complaining party must make a written demand on the legislative body to cure or correct the alleged violation. The written demand must be made within 90 days after the challenged action was taken. However, if the challenged action was taken in open session and involves a violation of the agenda requirements of Section 54954.2, then the written demand must be made within 30 days. The legislative body is required to cure or correct the challenged action and inform the party who filed the demand of its correcting actions, or its decision not to cure or correct, within 30 days. The complaining party must file suit within 15 days after receipt of the written notice from the legislative body, or if there is no written response, within 15 days after the 30-day cure period expires. § 54960.1(b). Under Section 54960.2, prior to filing suit to obtain a judicial determination that an alleged Brown Act violation occurred after January 1, 2013, the district attorney or interested person must submit a cease and desist letter to the legislative body clearly describing the legislative body's past action and the nature of the alleged violation within nine months of the alleged violation. Second, the legislative body may respond within 30 days, including responding with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate the Brown Act. If the legislative agency responds with an unconditional commitment, that commitment must be approved by the legislative body in open session at a regular or special meeting as a separate item of business not on the consent calendar, and must be in substantially the form set forth in Section 54960.2(c)(1). Also, a legislative body may resolve to rescind an unconditional commitment with proper notice to the public and to each person to whom the unconditional commitment was made. Upon rescission, the district attorney or any interested person may file an action pursuant to Section 54960(a). Finally, Section 54960.2 provides further deadlines and requirements that must be met when filing an action in connection with an unconditional commitment. § 54960.2.

A member of a legislative body will not be criminally liable for a violation of the Brown Act unless the member intends to deprive the public of information which the member knows or has reason to know the public is entitled to under the Brown Act. § 54959. This standard became effective in 1994 and is a different standard from most criminal standards. Until it is applied and interpreted by a court, it is not clear what type of evidence will be necessary to prosecute a Brown Act violation.

XII. CONCLUSION

The Brown Act's many rules and ambiguities can be confusing, and compliance with it can be difficult. In the event that you have any questions regarding any provision of the law, you should contact your legal counsel for advice.

The Ralph M. Brown Act

Updated including changes effective January 1, 2019

The Ralph M. Brown Act

Government Code §§ 54950-54963

Section 54950. Declaration of public policy

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

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.

Section 54950.5. Title of act

This chapter shall be known as the Ralph M. Brown Act.

Section 54951. "Local agency"

As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

Section 54952. "Legislative body"

As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(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.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

Section 54952.1. Conduct and treatment of electee

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.

Section 54952.2. Specified communications of legislative body of local agency prohibited outside meeting thereof

(a) As used in this chapter, "meeting" means any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.

(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.

(2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members

of the legislative body the comments or position of any other member or members of the legislative body.

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

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

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

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

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

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

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

Section 54952.3. Simultaneous or serial order meetings authorized; Requirements; Compensation or stipend

(a) A legislative body that has convened a meeting and whose membership constitutes a quorum of any other legislative body may convene a meeting of that other legislative body, simultaneously or in serial order, only if a clerk or a member of the

convened legislative body verbally announces, prior to convening any simultaneous or serial order meeting of that subsequent legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the subsequent legislative body and identifies that the compensation or stipend shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend. However, the clerk or member of the legislative body shall not be required to announce the amount of compensation if the amount of compensation is prescribed in statute and no additional compensation has been authorized by a local agency.

(b) For purposes of this section, compensation and stipend shall not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties, including, but not limited to, reimbursement of expenses relating to travel, meals, and lodging.

Section 54952.6. "Action taken"

As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

Section 54952.7. Copy of chapter

A legislative body of a local agency may require that a copy of this chapter be given to each member of the legislative body and any person elected to serve as a member of the legislative body who has not assumed the duties of office. An elected legislative body of a local agency may require that a copy of this chapter be given to each member of each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body.

Section 54953. Requirement that meetings be open and public; Teleconferencing; Teleconference meetings by health authority

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(4) This subdivision shall remain in effect only until January 1, 2018.

Section 54953.1. Grand jury testimony

The provisions of this chapter shall not be construed to prohibit the members of the legislative body of a local agency from giving testimony in private before a grand jury, either as individuals or as a body.

Section 54953.2. Meetings to conform to Americans with Disabilities Act

All meetings of a legislative body of a local agency that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Section 54953.3. Registration of attendance

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Section 54953.5. Recording proceedings

(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the legislative body of the local agency that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of

Division 7 of Title 1), but, notwithstanding Section 34090, may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the local agency.

Section 54953.6. Restrictions on broadcasts of proceedings

No legislative body of a local agency shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

Section 54953.7. Access to meetings beyond minimal standards

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

Section 54954. Rules for conduct of business; Time and place of meetings

(a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

Section 54954.1. Request for notice; Renewal; Fee

Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any meeting of a legislative body be mailed to that person. If requested, the agenda and documents in the agenda packet shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Upon receipt of the

written request, the legislative body or its designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to Section 54954.2 and 54956 or upon distribution to all, or a majority of all, of the members of a legislative body, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The legislative body may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service. Failure of the requesting person to receive the agenda or agenda packet pursuant to this section shall not constitute grounds for invalidation of the actions of the legislative body taken at the meeting for which the agenda or agenda packet was not received.

Section 54954.2. Posting of agenda; Actions not on agenda

(a) (1) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public and on the local agency's Internet Web site, if the local agency has one. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The agenda shall include information regarding how, to whom, and when a request for disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting.

(2) For a meeting occurring on and after January 1, 2019, of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state that is accessible through a prominent, direct link to the current agenda. The direct link to the agenda shall not be in a contextual menu; however, a link in addition to the direct link to the agenda may be accessible through a contextual menu.

(B) An online posting of an agenda including, but not limited to, an agenda posted in an integrated agenda management platform, shall be posted in an open format that meets all of the following requirements:

(i) Retrievable, downloadable, indexable, and electronically searchable by commonly used Internet search applications.

(ii) Platform independent and machine readable.

(iii) Available to the public free of charge and without any restriction that would impede the reuse or redistribution of the agenda.

(C) A legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state that has an Internet Web site and an integrated agenda management platform shall not be required to comply with subparagraph (A) if all of the following are met:

(i) A direct link to the integrated agenda management platform shall be posted on the primary Internet Web site homepage of a city, county, city and county, special district, school district, or political subdivision established by the state. The direct link to the integrated agenda management platform shall not be in a contextual menu. When a person clicks on the direct link to the integrated agenda management platform, the direct link shall take the person directly to an Internet Web site with the agendas of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state.

(ii) The integrated agenda management platform may contain the prior agendas of a legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state for all meetings occurring on or after January 1, 2019.

(iii) The current agenda of the legislative body of a city, county, city and county, special district, school district, or political subdivision established by the state shall be the first agenda available at the top of the integrated agenda management platform.

(iv) All agendas posted in the integrated agenda management platform shall comply with the requirements in clauses (i), (ii), and (iii) of subparagraph (B).

(D) For the purposes of this paragraph, both of the following definitions shall apply:

(i) "Integrated agenda management platform" means an Internet Web site of a city, county, city and county, special district, school district, or political subdivision established by the state dedicated to providing the entirety of the agenda information for the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state to the public.

(ii) "Legislative body" has the same meaning as that term is used in subdivision (a) of Section 54952.

(E) The provisions of this paragraph shall not apply to a political subdivision of a local agency that was established by the legislative body of the city, county, city and county, special district, school district, or political subdivision established by the state.

(3) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the legislative body may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the legislative body shall publicly identify the item.

(1) Upon a determination by a majority vote of the legislative body that an emergency situation exists, as defined in Section 54956.5.

(2) Upon a determination by a two-thirds vote of the members of the legislative body present at the meeting, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the legislative body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(c) This section is necessary to implement and reasonably within the scope of paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

(d) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

Section 54954.3. Public testimony at regular meetings

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public,

before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) (1) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(2) Notwithstanding paragraph (1), when the legislative body of a local agency limits time for public comment, the legislative body of a local agency shall provide at least twice the allotted time to a member of the public who utilizes a translator to ensure that non-English speakers receive the same opportunity to directly address the legislative body of a local agency.

(3) Paragraph (2) shall not apply if the legislative body of a local agency utilizes simultaneous translation equipment in a manner that allows the legislative body of a local agency to hear the translated public testimony simultaneously.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

Section 54954.4. Legislative findings and declarations relating to reimbursements; Legislative intent; Review of claims

(a) The Legislature hereby finds and declares that Section 12 of Chapter 641 of the Statutes of 1986, authorizing reimbursement to local agencies and school districts for costs mandated by the state pursuant to that act, shall be interpreted strictly. The intent of the Legislature is to provide reimbursement for only those costs which are clearly and unequivocally incurred as the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986.

(b) In this regard, the Legislature directs all state employees and officials involved in reviewing or authorizing claims for reimbursement, or otherwise participating in the reimbursement process, to rigorously review each claim and authorize only those claims, or parts thereof, which represent costs which are clearly and unequivocally incurred as

the direct and necessary result of compliance with Chapter 641 of the Statutes of 1986 and for which complete documentation exists. For purposes of Section 54954.2, costs eligible for reimbursement shall only include the actual cost to post a single agenda for any one meeting.

(c) The Legislature hereby finds and declares that complete, faithful, and uninterrupted compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) is a matter of overriding public importance. Unless specifically stated, no future Budget Act, or related budget enactments, shall, in any manner, be interpreted to suspend, eliminate, or otherwise modify the legal obligation and duty of local agencies to fully comply with Chapter 641 of the Statutes of 1986 in a complete, faithful, and uninterrupted manner.

Section 54954.5. Description of closed session items

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

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

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

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

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

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION
(Paragraph (1) of subdivision (d) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to paragraphs (2) to (5), inclusive, of subdivision (e) of Section 54956.9.)

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS

Claimant: (Specify name unless unspecified pursuant to Section 54961)

Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYMENT

Title: (Specify description of position to be filled)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: (Specify position title of employee being reviewed)

PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS

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

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

or

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

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

(j) With respect to every item of business to be discussed in closed session pursuant to Section 54956.96:

CONFERENCE INVOLVING A JOINT POWERS AGENCY (Specify by name)

Discussion will concern: (Specify closed session description used by the joint powers agency)

Name of local agency representative on joint powers agency board: (Specify name)

(Additional information listing the names of agencies or titles of representatives attending the closed session as consultants or other representatives.)

(k) With respect to every item of business to be discussed in closed session pursuant to Section 54956.75:

AUDIT BY CALIFORNIA STATE AUDITOR'S OFFICE

Section 54954.6. Public meeting on general tax or assessment; Notice

(a) (1) Before adopting any new or increased general tax or any new or increased assessment, the legislative body of a local agency shall conduct at least one public meeting at which local officials shall allow public testimony regarding the proposed new or increased general tax or new or increased assessment in addition to the noticed public hearing at which the legislative body proposes to enact or increase the general tax or assessment.

For purposes of this section, the term "new or increased assessment" does not include any of the following:

(A) A fee that does not exceed the reasonable cost of providing the services, facilities, or regulatory activity for which the fee is charged.

(B) A service charge, rate, or charge, unless a special district's principal act requires the service charge, rate, or charge to conform to the requirements of this section.

(C) An ongoing annual assessment if it is imposed at the same or lower amount as any previous year.

(D) An assessment that does not exceed an assessment formula or range of assessments previously specified in the notice given to the public pursuant to subparagraph (G) of paragraph (2) of subdivision (c) and that was previously adopted by the agency or approved by the voters in the area where the assessment is imposed.

(E) Standby or immediate availability charges.

(2) The legislative body shall provide at least 45 days' public notice of the public hearing at which the legislative body proposes to enact or increase the general tax or assessment. The legislative body shall provide notice for the public meeting at the same time and in the same document as the notice for the public hearing, but the meeting shall occur prior to the hearing.

(b) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased general tax shall be accomplished by placing a display advertisement of at least one-eighth page in a newspaper of general circulation for three weeks pursuant to Section 6063 and by a first-class mailing to those interested parties who have filed a written request with the local agency for mailed notice of public meetings or hearings on new or increased general taxes. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the first publication of the joint notice pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. Notwithstanding paragraph (2) of subdivision (a), the joint notice need not include notice of the public meeting after the meeting has taken place. The public hearing pursuant to subdivision (a) shall take place no earlier than 45 days after the first publication of the joint notice pursuant to this subdivision. Any written request for mailed notices shall be effective for one year from the date on which it is filed unless a renewal request is filed. Renewal requests for mailed notices shall be filed on or before April 1 of each year. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(2) The notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) The amount or rate of the tax. If the tax is proposed to be increased from any previous year, the joint notice shall separately state both the existing tax rate and the proposed tax rate increase.

(B) The activity to be taxed.

(C) The estimated amount of revenue to be raised by the tax annually.

(D) The method and frequency for collecting the tax.

(E) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(F) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the tax.

(c) (1) The joint notice of both the public meeting and the public hearing required by subdivision (a) with respect to a proposal for a new or increased assessment on real property or businesses shall be accomplished through a mailing, postage prepaid, in the United States mail and shall be deemed given when so deposited. The public meeting pursuant to subdivision (a) shall take place no earlier than 10 days after the joint mailing pursuant to this subdivision. The public hearing shall take place no earlier than seven days after the public meeting pursuant to this subdivision. The envelope or the cover of the mailing shall include the name of the local agency and the return address of the sender. This mailed notice shall be in at least 10-point type and shall be given to all property owners or business owners proposed to be subject to the new or increased assessment by a mailing by name to those persons whose names and addresses appear on the last equalized county assessment roll, the State Board of Equalization assessment roll, or the local agency's records pertaining to business ownership, as the case may be.

(2) The joint notice required by paragraph (1) of this subdivision shall include, but not be limited to, the following:

(A) In the case of an assessment proposed to be levied on property, the estimated amount of the assessment per parcel. In the case of an assessment proposed to be levied on businesses, the proposed method and basis of levying the assessment in sufficient detail to allow each business owner to calculate the amount of assessment to be levied against each business. If the assessment is proposed to be increased from any previous year, the joint notice shall separately state both the amount of the existing assessment and the proposed assessment increase.

(B) A general description of the purpose or improvements that the assessment will fund.

(C) The address to which property owners may mail a protest against the assessment.

(D) The telephone number and address of an individual, office, or organization that interested persons may contact to receive additional information about the assessment.

(E) A statement that a majority protest will cause the assessment to be abandoned if the assessment act used to levy the assessment so provides. Notice shall also state the percentage of protests required to trigger an election, if applicable.

(F) The dates, times, and locations of the public meeting and hearing described in subdivision (a).

(G) A proposed assessment formula or range as described in subparagraph (D) of paragraph (1) of subdivision (a) if applicable and that is noticed pursuant to this section.

(3) Notwithstanding paragraph (1), in the case of an assessment that is proposed exclusively for operation and maintenance expenses imposed throughout the entire local agency, or exclusively for operation and maintenance assessments proposed to be levied on 50,000 parcels or more, notice may be provided pursuant to this subdivision or pursuant to paragraph (1) of subdivision (b) and shall include the estimated amount of the assessment of various types, amounts, or uses of property and the information required by subparagraphs (B) to (G), inclusive, of paragraph (2) of subdivision (c).

(4) Notwithstanding paragraph (1), in the case of an assessment proposed to be levied pursuant to Part 2 (commencing with Section 22500) of Division 2 of the Streets and Highways Code by a regional park district, regional park and open-space district, or regional open-space district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of, or pursuant to Division 26 (commencing with Section 35100) of, the Public Resources Code, notice may be provided pursuant to paragraph (1) of subdivision (b).

(d) The notice requirements imposed by this section shall be construed as additional to, and not to supersede, existing provisions of law, and shall be applied concurrently with the existing provisions so as to not delay or prolong the governmental decisionmaking process.

(e) This section shall not apply to any new or increased general tax or any new or increased assessment that requires an election of either of the following:

(1) The property owners subject to the assessment.

(2) The voters within the local agency imposing the tax or assessment.

(f) Nothing in this section shall prohibit a local agency from holding a consolidated meeting or hearing at which the legislative body discusses multiple tax or assessment proposals.

(g) The local agency may recover the reasonable costs of public meetings, public hearings, and notice required by this section from the proceeds of the tax or assessment. The costs recovered for these purposes, whether recovered pursuant to this subdivision or any other provision of law, shall not exceed the reasonable costs of the public meetings, public hearings, and notice.

(h) Any new or increased assessment that is subject to the notice and hearing provisions of Article XIII C or XIII D of the California Constitution is not subject to the notice and hearing requirements of this section.

Section 54955. Adjournment of meetings

The legislative body of a local agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the

legislative body may declare the meeting adjourned to a stated time and place and he shall cause a written notice of the adjournment to be given in the same manner as provided in Section 54956 for special meetings, unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule.

Section 54955.1. Continuance of hearing

Any hearing being held, or noticed or ordered to be held, by a legislative body of a local agency at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the legislative body in the same manner and to the same extent set forth in Section 54955 for the adjournment of meetings; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 54956. Special meetings; call; notice; meetings regarding local agency executive salaries, salary schedules, or compensation in form of fringe benefits; p0sting on Internet Web site

(a) A special meeting may be called at any time by the presiding officer of the legislative body of a local agency, or by a majority of the members of the legislative body, by delivering written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency's Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the legislative body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the legislative body a written waiver of notice. The waiver may be given by telegram. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

The call and notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

(b) Notwithstanding any other law, a legislative body shall not call a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits, of a local agency executive, as defined in subdivision (d) of Section 3511.1.

However, this subdivision does not apply to a local agency calling a special meeting to discuss the local agency's budget.

(c) For purposes of subdivision (a), the requirement that the agenda be posted on the local agency's Internet Web site, if the local agency has one, shall only apply to a legislative body that meets either of the following standards:

(1) A legislative body as that term is defined by subdivision (a) of Section 54952.

(2) A legislative body as that term is defined by subdivision (b) of Section 54952, if the members of the legislative body are compensated for their appearance, and if one or more of the members of the legislative body are also members of a legislative body as that term is defined by subdivision (a) of Section 54952.

Section 54956.5. Emergency meetings; Notice

(a) For purposes of this section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this Section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members

of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

Section 54956.6. Fees

No fees may be charged by the legislative body of a local agency for carrying out any provision of this chapter, except as specifically authorized by this chapter.

Section 54956.7. Closed sessions regarding application from person with criminal record

Whenever a legislative body of a local agency determines that it is necessary to discuss and determine whether an applicant for a license or license renewal, who has a criminal record, is sufficiently rehabilitated to obtain the license, the legislative body may hold a closed session with the applicant and the applicant's attorney, if any, for the purpose of holding the discussion and making the determination. If the legislative body determines, as a result of the closed session, that the issuance or renewal of the license should be denied, the applicant shall be offered the opportunity to withdraw the application. If the applicant withdraws the application, no record shall be kept of the discussions or decisions made at the closed session and all matters relating to the closed session shall be confidential. If the applicant does not withdraw the application, the legislative body shall take action at the public meeting during which the closed session is held or at its next public meeting denying the application for the license but all matters relating to the closed session are confidential and shall not be disclosed without the consent of the applicant, except in an action by an applicant who has been denied a license challenging the denial of the license.

Section 54956.75. Closed session for response to final draft audit report

(a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a legislative body of a local agency meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law.

Section 54956.8. Closed sessions regarding real property negotiations

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease. However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its negotiators, the real property or real properties which the negotiations may concern, and the person or persons with whom its negotiators may negotiate.

For purposes of this section, negotiators may be members of the legislative body of the local agency.

For purposes of this section, "lease" includes renewal or renegotiation of a lease.

Nothing in this section shall preclude a local agency from holding a closed session for discussions regarding eminent domain proceedings pursuant to Section 54956.9.

Section 54956.81. Closed sessions regarding purchase or sale of pension fund investments

Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments. All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

Section 54956.86. Closed session for health plan member

Notwithstanding any other provision of this chapter, a legislative body of a local agency which provides services pursuant to Section 14087.3 of the Welfare and Institutions Code may hold a closed session to hear a charge or complaint from a member enrolled in its health plan if the member does not wish to have his or her name, medical status, or other information that is protected by federal law publicly disclosed. Prior to holding a closed session pursuant to this section, the legislative body shall inform the member, in writing, of his or her right to have the charge or complaint heard in an open session rather than a closed session.

Section 54956.87. Disclosure of records and information; Meetings in closed session

(a) Notwithstanding any other provision of this chapter, the records of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors, whether paper records, records maintained in the management information system, or records in any other form, that relate to provider rate or payment determinations, allocation or distribution methodologies for provider payments, formulas or calculations for these payments, and contract negotiations with providers of health care for alternative rates are exempt from

disclosure for a period of three years after the contract is fully executed. The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(b) Notwithstanding any other provision of law, the governing board of a health plan that is licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) and that is governed by a county board of supervisors may order that a meeting held solely for the purpose of discussion or taking action on health plan trade secrets, as defined in subdivision (f), shall be held in closed session. The requirements of making a public report of action taken in closed session, and the vote or abstention of every member present, may be limited to a brief general description without the information constituting the trade secret.

(c) Notwithstanding any other provision of law, the governing board of a health plan may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by the health plan with providers of health care services concerning all matters related to rates of payment. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to subdivision (b) that are provided to persons who have made the timely or standing request.

(d) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(e) The provisions of this section shall not prevent access to any records by the Joint Legislative Audit Committee in the exercise of its powers pursuant to Article 1 (commencing with Section 10500) of Chapter 4 of Part 2 of Division 2 of Title 2. The provisions of this section also shall not prevent access to any records by the Department of Corporations in the exercise of its powers pursuant to Article 1 (commencing with Section 1340) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(f) For purposes of this section, "health plan trade secret" means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(1) The secrecy of the information is necessary for the health plan to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(2) Premature disclosure of the trade secret would create a substantial probability of depriving the health plan of a substantial economic benefit or opportunity.

Section 54956.9. Closed sessions concerning pending litigation; Lawyer-client privilege

(a) Nothing in this chapter shall be construed to prevent a legislative body of a local agency, based on advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the local agency in the litigation.

(b) For purposes of this chapter, all expressions of the lawyer-client privilege other than those provided in this Section are hereby abrogated. This Section is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this chapter.

(c) For purposes of this section, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(d) For purposes of this section, litigation shall be considered pending when any of the following circumstances exist:

(1) Litigation, to which the local agency is a party, has been initiated formally.

(2) 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.

(3) Based on existing facts and circumstances, the legislative body of the local agency is meeting only to decide whether a closed session is authorized pursuant to paragraph (2).

(4) Based on existing facts and circumstances, the legislative body of the local agency has decided to initiate or is deciding whether to initiate litigation.

(e) For purposes of paragraphs (2) and (3) of subdivision (d), "existing facts and circumstances" shall consist only of one of the following:

(1) Facts and circumstances that might result in litigation against the local agency but which the local agency believes are not yet known to a potential plaintiff or plaintiffs, which facts and circumstances need not be disclosed.

(2) Facts and circumstances, including, but not limited to, an accident, disaster, incident, or transactional occurrence that might result in litigation against the agency and that are known to a potential plaintiff or plaintiffs, which facts or circumstances shall be publicly stated on the agenda or announced.

(3) The receipt of a claim pursuant to the Government Claims Act (Division 3.6 (commencing with Section 810) of Title 1 of the Government Code) or some other written

communication from a potential plaintiff threatening litigation, which claim or communication shall be available for public inspection pursuant to Section 54957.5.

(4) A statement made by a person in an open and public meeting threatening litigation on a specific matter within the responsibility of the legislative body.

(5) A statement threatening litigation made by a person outside an open and public meeting on a specific matter within the responsibility of the legislative body so long as the official or employee of the local agency receiving knowledge of the threat makes a contemporaneous or other record of the statement prior to the meeting, which record shall be available for public inspection pursuant to Section 54957.5. The records so created need not identify the alleged victim of unlawful or tortious sexual conduct or anyone making the threat on their behalf, or identify a public employee who is the alleged perpetrator of any unlawful or tortious conduct upon which a threat of litigation is based, unless the identity of the person has been publicly disclosed.

(f) Nothing in this Section shall require disclosure of written communications that are privileged and not subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(g) Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session. If the session is closed pursuant to paragraph (1) of subdivision (d), the body shall state the title of or otherwise specifically identify the litigation to be discussed, unless the body states that to do so would jeopardize the agency's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(h) A local agency shall be considered to be a "party" or to have a "significant exposure to litigation" if an officer or employee of the local agency is a party or has significant exposure to litigation concerning prior or prospective activities or alleged activities during the course and scope of that office or employment, including litigation in which it is an issue whether an activity is outside the course and scope of the office or employment.

Section 54956.95. Closed sessions regarding liability

(a) Nothing in this chapter shall be construed to prevent a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, for purposes of insurance pooling, or a local agency member of the joint powers agency, from holding a closed session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the joint powers agency or a local agency member of the joint powers agency.

(b) Nothing in this chapter shall be construed to prevent the Local Agency Self-Insurance Authority formed pursuant to Chapter 5.5 (commencing with Section 6599.01) of Division 7 of Title 1, or a local agency member of the authority, from holding a closed

session to discuss a claim for the payment of tort liability losses, public liability losses, or workers' compensation liability incurred by the authority or a local agency member of the authority.

(c) Nothing in this section shall be construed to affect Section 54956.9 with respect to any other local agency.

Section 54956.96. Disclosure of specified information in closed session of joint powers agency; Authorization of designated alternate to attend closed session; Closed session of legislative body of local agency member

(a) Nothing in this chapter shall be construed to prevent the legislative body of a joint powers agency formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, from adopting a policy or a bylaw or including in its joint powers agreement provisions that authorize either or both of the following:

(1) All information received by the legislative body of the local agency member in a closed session related to the information presented to the joint powers agency in closed session shall be confidential. However, a member of the legislative body of a member local agency may disclose information obtained in a closed session that has direct financial or liability implications for that local agency to the following individuals:

(A) Legal counsel of that member local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that member local agency.

(B) Other members of the legislative body of the local agency present in a closed session of that member local agency.

(2) Any designated alternate member of the legislative body of the joint powers agency who is also a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the joint powers agency in lieu of a local agency member's regularly appointed member to attend closed sessions of the joint powers agency.

(b) If the legislative body of a joint powers agency adopts a policy or a bylaw or includes provisions in its joint powers agreement pursuant to subdivision (a), then the legislative body of the local agency member, upon the advice of its legal counsel, may conduct a closed session in order to receive, discuss, and take action concerning information obtained in a closed session of the joint powers agency pursuant to paragraph (1) of subdivision (a).

Section 54957. Closed session regarding public security, facilities, employees, examination of witness

(a) This chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions with the Governor, Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a

security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), this chapter shall not be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. This subdivision shall not limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

Section 54957.1. Public report of action taken in closed session; Form; Availability; Actions for injury to interests

(a) The legislative body of any local agency shall publicly report any action taken in closed session and the vote or abstention on that action of every member present, as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to Section 54956.8 shall be reported after the agreement is final, as follows:

(A) If its own approval renders the agreement final, the body shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to its legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as follows:

(A) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(B) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Disposition reached as to claims discussed in closed session pursuant to Section 54956.95 shall be reported as soon as reached in a manner that identifies the name of the claimant, the name of the local agency claimed against, the substance of the claim, and any monetary amount approved for payment and agreed upon by the claimant.

(5) Action taken to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the nonrenewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and

has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

(7) Pension fund investment transaction decisions made pursuant to Section 54956.81 shall be disclosed at the first open meeting of the legislative body held after the earlier of the close of the investment transaction or the transfer of pension fund assets for the investment transaction.

(b) Reports that are required to be made pursuant to this Section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

(c) The documentation referred to in subdivision (b) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

(d) Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

(e) No action for injury to a reputational, liberty, or other personal interest may be commenced by or on behalf of any employee or former employee with respect to whom a disclosure is made by a legislative body in an effort to comply with this section.

(f) This Section is necessary to implement, and reasonably within the scope of, paragraph (1) of subdivision (b) of Section 3 of Article I of the California Constitution.

Section 54957.2. Minute book for closed sessions

(a) The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be kept confidential. The minute book shall be available only to members of the legislative body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session.

(b) An elected legislative body of a local agency may require that each legislative body all or a majority of whose members are appointed by or under the authority of the elected legislative body keep a minute book as prescribed under subdivision (a).

Section 54957.5. Agendas and other writings as public records

(a) Notwithstanding Section 6255 or any other law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

(b) (1) If a writing that is a public record under subdivision (a), and that relates to an agenda item for an open session of a regular meeting of the legislative body of a local agency, is distributed less than 72 hours prior to that meeting, the writing shall be made available for public inspection pursuant to paragraph (2) at the time the writing is distributed to all, or a majority of all, of the members of the body.

(2) A local agency shall make any writing described in paragraph (1) available for public inspection at a public office or location that the agency shall designate for this purpose. Each local agency shall list the address of this office or location on the agendas for all meetings of the legislative body of that agency. The local agency also may post the writing on the local agency's Internet Web site in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(3) This subdivision shall become operative on July 1, 2008.

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

(d) This chapter shall not be construed to prevent the legislative body of a local agency from charging a fee or deposit for a copy of a public record pursuant to Section 6253, except that a surcharge shall not be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

(e) This section shall not be construed to limit or delay the public's right to inspect or obtain a copy of any record required to be disclosed under the requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7

of Title 1). This chapter shall not be construed to require a legislative body of a local agency to place any paid advertisement or any other paid notice in any publication.

Section 54957.6. Closed sessions regarding employee matters

(a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.

Closed sessions held pursuant to this section shall not include final action on the proposed compensation of one or more unrepresented employees.

For the purposes enumerated in this section, a legislative body of a local agency may also meet with a state conciliator who has intervened in the proceedings.

(b) For the purposes of this section, the term "employee" shall include an officer or an independent contractor who functions as an officer or an employee, but shall not include any elected official, member of a legislative body, or other independent contractors.

Section 54957.7. Disclosure of items to be discussed at closed session

(a) Prior to holding any closed session, the legislative body of the local agency shall disclose, in an open meeting, the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. In the closed session, the legislative body may consider only those matters covered in its statement. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

(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.

(c) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcements.

Section 54957.8. Closed sessions of multijurisdictional drug law enforcement agencies

(a) For purposes of this section, "multijurisdictional law enforcement agency" means a joint powers entity formed pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 that provides law enforcement services for the parties to the joint powers agreement for the purpose of investigating criminal activity involving drugs; gangs; sex crimes; firearms trafficking or felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft.

(b) Nothing contained in this chapter shall be construed to prevent the legislative body of a multijurisdictional law enforcement agency, or an advisory body of a multijurisdictional law enforcement agency, from holding closed sessions to discuss the case records of any ongoing criminal investigation of the multijurisdictional law enforcement agency or of any party to the joint powers agreement, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.

Section 54957.9. Authorization to clear room where meeting willfully interrupted; Readmission

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting, the members of the legislative body conducting the meeting may order the meeting room cleared and continue in session. Only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the legislative body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting.

Section 54957.10. Closed sessions regarding application for early withdrawal of deferred compensation plan funds

Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions to discuss a local agency employee's application for early withdrawal of funds in a deferred compensation plan when the application is based on

financial hardship arising from an unforeseeable emergency due to illness, accident, casualty, or other extraordinary event, as specified in the deferred compensation plan.

Section 54958. Application of chapter

The provisions of this chapter shall apply to the legislative body of every local agency notwithstanding the conflicting provisions of any other state law.

Section 54959. Criminal penalty for violation of chapter

Each member of a legislative body who attends a meeting of that legislative body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor.

Section 54960. Proceeding to prevent violation of chapter; Recording closed sessions; Procedure for discovery of tapes

(a) The district attorney or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this chapter by members of the legislative body of a local agency or to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body, or to determine the applicability of this chapter to past actions of the legislative body, subject to Section 54960.2, or to determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the legislative body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 54956.7, 54956.8, 54956.9, 54956.95, 54957, or 54957.6, order the legislative body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by either the district attorney or the plaintiff in a civil action pursuant to Section 54959, 54960, or 54960.1 alleging that a violation of this chapter has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this chapter, the court shall, in its discretion, make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) This Section shall not permit discovery of communications that are protected by the attorney-client privilege.

Section 54960.1. Proceeding to determine validity of action; Demand for correction

(a) The district attorney or any interested person may commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section. Nothing in this chapter shall be construed to prevent a legislative body from curing or correcting an action challenged pursuant to this section.

(b) Prior to any action being commenced pursuant to subdivision (a), the district attorney or interested person shall make a demand of the legislative body to cure or correct the action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5. The demand shall be in writing and clearly describe the challenged action of the legislative body and nature of the alleged violation.

(c) (1) The written demand shall be made within 90 days from the date the action was taken unless the action was taken in an open session but in violation of Section 54954.2, in which case the written demand shall be made within 30 days from the date the action was taken.

(2) Within 30 days of receipt of the demand, the legislative body shall cure or correct the challenged action and inform the demanding party in writing of its actions to cure or correct or inform the demanding party in writing of its decision not to cure or correct the challenged action.

(3) If the legislative body takes no action within the 30-day period, the inaction shall be deemed a decision not to cure or correct the challenged action, and the 15-day period to commence the action described in subdivision (a) shall commence to run the day after the 30-day period to cure or correct expires.

(4) Within 15 days of receipt of the written notice of the legislative body's decision to cure or correct, or not to cure or correct, or within 15 days of the expiration of the 30-day period to cure or correct, whichever is earlier, the demanding party shall be required to commence the action pursuant to subdivision (a) or thereafter be barred from commencing the action.

(d) An action taken that is alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in substantial compliance with Sections 54953, 54954.2, 54954.5, 54954.6, 54956, and 54956.5.

(2) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement thereto.

(3) The action taken gave rise to a contractual obligation, including a contract let by competitive bid other than compensation for services in the form of salary or fees for professional services, upon which a party has, in good faith and without notice of a challenge to the validity of the action, detrimentally relied.

(4) The action taken was in connection with the collection of any tax.

(5) Any person, city, city and county, county, district, or any agency or subdivision of the state alleging noncompliance with subdivision (a) of Section 54954.2, Section 54956, or Section 54956.5, because of any defect, error, irregularity, or omission in the notice given pursuant to those provisions, had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken, if the meeting was noticed pursuant to Section 54954.2, or 24 hours prior to the meeting at which the action was taken if the meeting was noticed pursuant to Section 54956, or prior to the meeting at which the action was taken if the meeting is held pursuant to Section 54956.5.

(e) During any action seeking a judicial determination pursuant to subdivision (a) if the court determines, pursuant to a showing by the legislative body that an action alleged to have been taken in violation of Section 54953, 54954.2, 54954.5, 54954.6, 54956, or 54956.5 has been cured or corrected by a subsequent action of the legislative body, the action filed pursuant to subdivision (a) shall be dismissed with prejudice.

(f) The fact that a legislative body takes a subsequent action to cure or correct an action taken pursuant to this section shall not be construed or admissible as evidence of a violation of this chapter.

Section 54960.2 Proceeding to determine the applicability of chapter to past actions of legislative body; Conditions; Cease and desist letter

(a) The district attorney or any interested person may file an action to determine the applicability of this chapter to past actions of the legislative body pursuant to subdivision (a) of Section 54960 only if all of the following conditions are met:

(1) The district attorney or interested person alleging a violation of this chapter first submits a cease and desist letter by postal mail or facsimile transmission to the clerk or secretary of the legislative body being accused of the violation, as designated in the statement pertaining to that public agency on file pursuant to Section 53051, or if the agency does not have a statement on file designating a clerk or a secretary, to the chief executive officer of that agency, clearly describing the past action of the legislative body and nature of the alleged violation.

(2) The cease and desist letter required under paragraph (1) is submitted to the legislative body within nine months of the alleged violation.

(3) The time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b) has expired and the legislative body has not provided an unconditional commitment pursuant to subdivision (c).

(4) Within 60 days of receipt of the legislative body's response to the cease and desist letter, other than an unconditional commitment pursuant to subdivision (c), or within 60 days of the expiration of the time during which the legislative body may respond to the cease and desist letter pursuant to subdivision (b), whichever is earlier, the party submitting the cease and desist letter shall commence the action pursuant to subdivision (a) of Section 54960 or thereafter be barred from commencing the action.

(b) The legislative body may respond to a cease and desist letter submitted pursuant to subdivision (a) within 30 days of receiving the letter. This subdivision shall not be construed to prevent the legislative body from providing an unconditional commitment pursuant to subdivision (c) at any time after the 30-day period has expired, except that in that event the court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section, in accordance with Section 54960.5.

(c) (1) If the legislative body elects to respond to the cease and desist letter with an unconditional commitment to cease, desist from, and not repeat the past action that is alleged to violate this chapter, that response shall be in substantially the following form:

> To _____:
>
> The [name of legislative body] has received your cease and desist letter dated [date] alleging that the following described past action of the legislative body violates the Ralph M. Brown Act:
>
> [Describe alleged past action, as set forth in the cease and desist letter submitted pursuant to subdivision (a)]

In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the [name of legislative body] hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action as described above.

The [name of legislative body] may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment, or may be mailed to an address that you have designated in writing.

Very truly yours,

_____

[Chairperson or acting chairperson of the legislative body]

(2) An unconditional commitment pursuant to this subdivision shall be approved by the legislative body in open session at a regular or special meeting as a separate item of business, and not on its consent agenda.

(3) An action shall not be commenced to determine the applicability of this chapter to any past action of the legislative body for which the legislative body has provided an unconditional commitment pursuant to this subdivision. During any action seeking a judicial determination regarding the applicability of this chapter to any past action of the legislative body pursuant to subdivision (a), if the court determines that the legislative body has provided an unconditional commitment pursuant to this subdivision, the action shall be dismissed with prejudice. Nothing in this subdivision shall be construed to modify or limit the existing ability of the district attorney or any interested person to commence an action to determine the applicability of this chapter to ongoing actions or threatened future actions of the legislative body.

(4) Except as provided in subdivision (d), the fact that a legislative body provides an unconditional commitment shall not be construed or admissible as evidence of a violation of this chapter.

(d) If the legislative body provides an unconditional commitment as set forth in subdivision (c), the legislative body shall not thereafter take or engage in the challenged action described in the cease and desist letter, except as provided in subdivision (e). Violation of this subdivision shall constitute an independent violation of this chapter, without regard to whether the challenged action would otherwise violate this chapter. An action alleging past violation or threatened future violation of this subdivision may be

brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

(e) The legislative body may resolve to rescind an unconditional commitment made pursuant to subdivision (c) by a majority vote of its membership taken in open session at a regular meeting as a separate item of business not on its consent agenda, and noticed on its posted agenda as "Rescission of Brown Act Commitment," provided that not less than 30 days prior to such regular meeting, the legislative body provides written notice of its intent to consider the rescission to each person to whom the unconditional commitment was made, and to the district attorney. Upon rescission, the district attorney or any interested person may commence an action pursuant to subdivision (a) of Section 54960. An action under this subdivision may be brought pursuant to subdivision (a) of Section 54960, without regard to the procedural requirements of this section.

Section 54960.5. Costs and attorney fees

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960, 54960.1 or 54960.2 where it is found that a legislative body of the local agency has violated this chapter. Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that Section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

A court may award court costs and reasonable attorney fees to a defendant in any action brought pursuant to Section 54960 or 54960.1 where the defendant has prevailed in a final determination of such action and the court finds that the action was clearly frivolous and totally lacking in merit.

Section 54961. Meeting place with discriminatory admission policies; Identification of victim of sexual or child abuse

(a) No legislative body of a local agency shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. This section shall apply to every local agency as defined in Section 54951.

(b) No notice, agenda, announcement, or report required under this chapter need identify any victim or alleged victim of tortious sexual conduct or child abuse unless the identity of the person has been publicly disclosed.

Section 54962. Prohibition against closed sessions except as expressly authorized

Except as expressly authorized by this chapter, or by Sections 1461, 1462, 32106, and 32155 of the Health and Safety Code, or by Sections 37606, 37606.1, and 37624.3 of the Government Code as they apply to hospitals, or by any provision of the Education Code pertaining to school districts and community college districts, no closed session may be held by any legislative body of any local agency.

Section 54963. Disclosure of confidential information acquired in closed session prohibited; Disciplinary action for violation

(a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, "confidential information" means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this Section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this Section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

Richards, Watson & Gershon delivers practical advice and solutions tailored to the unique needs of California public entities.

About

Working seamlessly across offices in Los Angeles, San Francisco, Orange County, Temecula, and the Central Coast our dedicated team of experts provides the full-scope of public law services.

We are the lawyers of choice for clients who seek reliable, efficient, and effective legal counsel. Richards, Watson & Gershon serves as city attorney, special counsel and general counsel to clients of all sizes and demographics.

Our attorneys are proficient in areas of law only found in a firm with substantial experience in public agency representation. Local governments count on us for help with their most complex problems.

Specialties Include:

- Administrative Law
- Airports, Rail & Transit
- Brown Act
- Cannabis
- CEQA
- Coastal Act
- Code Enforcement
- Conflicts of Interest
- Construction & Public Works
- Elections
- Eminent Domain
- Environment & Natural Resources
- Housing
- Labor & Employment
- Land Use & Planning
- Litigation
- Police Practices
- Public Finance
- Public Records Act
- Real Estate & Leasing
- Rent Control
- Subdivisions & Zoning
- Taxes, Fees & Assessments
- Telecommunications
- Solid Waste
- Stormwater Compliance
- Water Rights & Water Law

LOS ANGELES
355 S. Grand Avenue
40th Floor
Los Angeles, CA 90071

SAN FRANCISCO
44 Montgomery Street
Suite 3800
San Francisco, CA 94104

ORANGE COUNTY
1 Civic Center Circle
P.O. Box 1059
Brea, CA 92822

TEMECULA
41000 Main Street
Suite 309
Temecula, CA 92590

CENTRAL COAST
847 Monterey Street
Suite 201
San Luis Obispo, CA 93401

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

LEAGUE® OF CALIFORNIA CITIES

ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this publication:

Brown Act Committee

Michael Jenkins, Committee Chair
City Attorney, Hermosa Beach, Rolling Hills and West Hollywood

Michael W. Barrett
City Attorney, Napa

Damien Brower
City Attorney, Brentwood

Ariel Pierre Calonne
City Attorney, Santa Barbara

Veronica Ramirez
Assistant City Attorney, Redwood City

Malathy Subramanian
City Attorney, Clayton and Lafayette

Paul Zarefsky
Deputy City Attorney, San Francisco

Gregory W. Stepanicich
1st Vice President, City Attorneys' Department
City Attorney Fairfield, Mill Valley, Town of Ross

League Staff

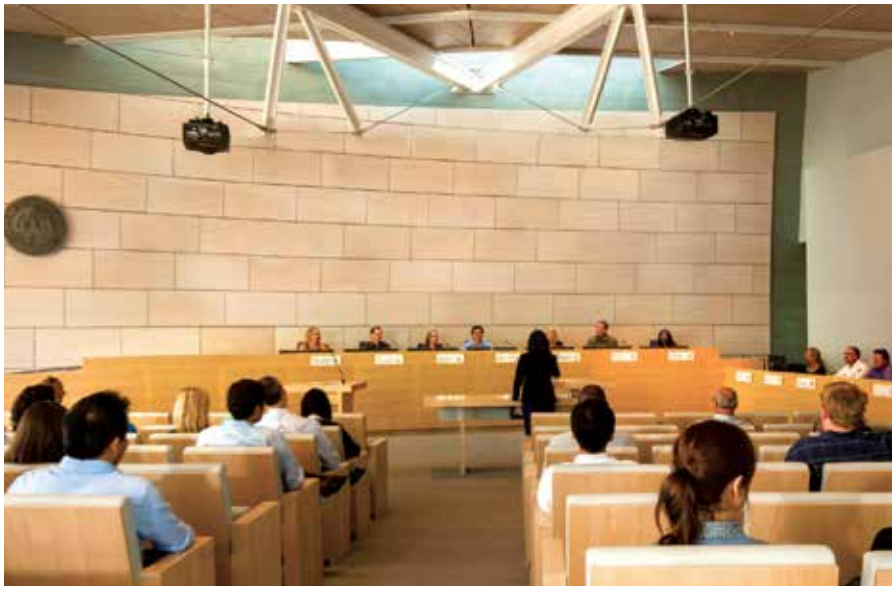
Patrick Whitnell, *General Counsel*

Koreen Kelleher, *Assistant General Counsel*

Corrie Manning, *Senior Deputy General Counsel*

Alison Leary, *Deputy General Counsel*

Janet Leonard, *Legal Assistant*



Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

TABLE OF CONTENTS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

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

"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."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at www.leginfo.ca.gov.

Chapter 2

LEGISLATIVE BODIES

Chapter 2

LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes:

- **The "governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

What is <u>not</u> a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  A. *No, because the committee has not been established by formal action of the legislative body.*

  Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

ENDNOTES:

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362

7 California Government Code section 54952.1

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805

9 California Government Code section 54952(b)

10 79 Ops.Cal.Atty.Gen. 69 (1996)

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal. App.4th 287, 300 fn. 5

15 "*The Brown Act, Open Meetings for Local Legislative Bodies,*" California Attorney General's Office (2003), p. 7

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879

21 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 3

MEETINGS

Chapter 3

MEETINGS

The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "… and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … 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] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[14]

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

> **The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

Q. The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

> **Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

Endnotes:

1 California Government Code section 54952.2(a)

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

11 "*The Brown Act,*" California Attorney General (2003), p. 10

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's Internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

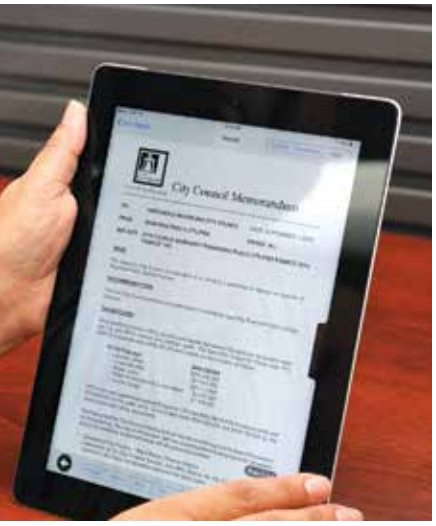
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.[37]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

Endnotes:

1 California Government Code section 54954.2(a)(1)

2 78 Ops.Cal.Atty.Gen. 327 (1995)

3 88 Ops.Cal.Atty.Gen. 218 (2005)

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 5

CLOSED SESSIONS

Chapter 5

CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8]

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter Include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[62]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18707

13 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

19 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

29 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

33 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

36 *Moreno v. City of King* (2005) 127 Cal.App.4th 17

37 California Government Code section 54957

38 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

53 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

66 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 6

REMEDIES

Chapter 6

REMEDIES

Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the ground that they violate the Brown Act.[1] Violations of the Brown Act, however, cannot be invalidated if they involve the following types of actions:

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

4 *McKee v. Orange Unified School District* (2003) 110 Cal. App.4th 1310, 1318-1319

5 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561

6 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

17 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36

18 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

LEAGUE® OF CALIFORNIA CITIES

1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200 | Fax: (916) 658-8240
www.cacities.org | www.cacities.org/events | www.westerncity.com

City of Davis
Social Services Commission Agenda
Community Chambers, 23 Russell Boulevard, Davis, CA 95616
Monday, November 21, 2016
7:00 P.M.

Commission Members:	Claire Goldstene, Donald Kalman, Ann Privateer, Mindy Romero (Vice Chair), Tracy Tomasky, Bernita Toney, R. Matthew Wise (Chair) Georgina Valencia (Alternate)
Council Liaison:	Robb Davis, Lucas Frerichs (Alternate)
Staff:	Kelly Stachowicz, Assistant City Manager Adrienne Heinig, Administrative Aide

Please note: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. No new items shall begin after 9:00 p.m. unless unanimous consent exists to continue.

1. **Call to Order & Roll Call**

2. **Approval of Agenda**

3. **Brief Announcements from Staff, Commissioners, and Liaisons**

4. **Public Comment**
   At this time any member of the public may address the commission on matters which are not listed on this agenda, or are listed on the consent calendar. Comments are usually limited to no more than 3 minutes per speaker. Speakers will be asked to state their name for the record.

5. **Consent Calendar**
   All matters listed under the Consent Calendar are considered routine and non-controversial, require no discussion, as items are expected to have unanimous support, and may be enacted by one motion.
   A. Approval of Minutes – September 19, 2016
   B. Approval of Minutes – October 17, 2016

6. **Regular Items**
   A. Finalize Recommendations for Critical Needs List for CDBG and HOME Program Year 2017-2018. Staff will present the final draft list of critical needs, so that the Commission may make any necessary changes, and take action on them.

7. **Commission and Staff Communications**

(Includes upcoming meeting items, events, subcommittee reports, reports on meetings attended, inter-jurisdictional bodies, inter-commission liaisons, etc.)

A. Social Services Commission Workplan. Review the current workplan, discuss additional focus areas/items, and incorporate any changes/updates.

8. Adjourn

In compliance with Brown Act regulations, this agenda was legally posted at least 72 hours in advance of the listed meeting date. Any writing related to an agenda item for this meeting distributed to the Commission less than 72 hours before this meeting is available online at http://cityofdavis.org/city-hall/city-council/commissions-and-committees/. These writings will also be available for review at the Commission meeting. For additional information regarding this agenda or this commission, please feel free to contact the City Manager's Office at 530-757-5602.

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

As required by the Americans with Disabilities Act, individuals needing special assistance to access the facility or to otherwise participate at this meeting, including auxiliary aids or services, should contact the City Manager's Office at 530-757-5602. Notification at least 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

City of Davis
Planning Commission Special Meeting Agenda
"Hyatt House Hotel" Site Visit
Greenbelt location on southside of 2750 Cowell Boulevard, Davis, CA 95618
Wednesday, September 7, 2016
8:00 A.M.

Commission Members:	Herman Boschken, Cheryl Essex, George Hague, Marilee Hanson (Vice Chair), Rob Hofmann (Chair), Cristina Ramirez, Stephen Streeter, Stephen Mikesell (Alternate)
Council Liaisons:	Lucas Frerichs, Rochelle Swanson (Alternate)
Staff:	Community Development/Sustainability Assistant Director Ash Feeney; Community Development Administrator Katherine Hess

Please note: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. No new items shall begin after 9:00 a.m. unless unanimous consent exists to continue.

9. Call to Order & Roll Call

10. Approval of Agenda

11. Public Comment

At this time, any member of the public may address the commission only on matters which are listed on this agenda. Comments are usually limited to no more than 3 minutes per speaker. Speakers will be asked to state their name for the record.

12. Regular Items

A. Site visit of proposed "Hyatt House Hotel" location, 2750 Cowell Boulevard

The Planning Commission is visiting the site to evaluate the proposed extended-stay hotel development in the context of surrounding land uses. The applicant has arranged for a professional drone company to allow assessment of views from upper floors of the building and will arrange for balloons to demark the location of proposed structure. Formal action will not be taken until the Planning Commission regular meeting of September 14, 2016.

Transportation to the site will not be provided. Anyone attending should meet on the on the greenbelt on the southside of the 2750 Cowell Boulevard project site at 8:00 A.M..

13. Adjournment

The next Planning Commission meeting will be held Wednesday, September 14, 2016, at 7:00 P.M.

In compliance with Brown Act regulations, this agenda was legally posted at least 24 hours in advance of the listed meeting date. For additional information regarding this agenda or this commission, please feel free to contact the City Clerk's Office at (530) 757-5648, or via e-mail at clerkweb@cityofdavis.org

The City does not transcribe its proceedings. Anyone who desires a verbatim record of this meeting should arrange for attendance by a court reporter or for other acceptable means of recordation. Such arrangements will be at the sole expense of the individual requesting the recordation.

As required by the Americans with Disabilities Act, individuals needing special assistance to access the facility or to otherwise participate at this meeting, including auxiliary aids or services, should contact the City Manager's Office at 530-757-5602. Notification at least 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting.

Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

LEAGUE® OF CALIFORNIA CITIES

MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and automony of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

About the Author

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

Table of Contents

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words "I move … "

A typical motion might be: "I move that we give a 10-day notice in the future for all our meetings."

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion,** for example, "A motion at this time would be in order."
2. **Suggesting a motion to the members of the body,** "A motion would be in order that we give a 10-day notice in the future for all our meetings."
3. **Making the motion.** As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So if a member makes what that member calls a "motion to amend," but the chair determines that it is really a "substitute motion," then the chair's designation governs.

A "friendly amendment" is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, "I want to suggest a friendly amendment to the motion." The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed,* the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion can contain a specific time in which the item can come back to the body. "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or sometimes someone simply shouts out "question." As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a "request" rather than as a formal motion. The chair can simply inquire of the body, "any further discussion?" If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the "question" as a formal motion, and proceed to it.

When a member of the body makes such a motion ("I move the previous question"), the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item.* This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," or "I move the question," or "I call the question," or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote "no" then the "yes" vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of "those present" then you treat abstentions one way. However, if the rules of the body say that you count the votes of those "present and voting," then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are "present and voting."

Accordingly, under the "present and voting" system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are "present"), but you treat the abstention votes on the motion as if they did not exist (they are not "voting"). On the other hand, if the rules of the body specifically say that you count votes of those "present" then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like "no" votes.

How does this work in practice?
Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are "present and voting." If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three "yes," one "no" and one "abstain" also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members "present." Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a "no" vote. Accordingly, if the votes were three "yes," one "no" and one "abstain," then the motion fails. The abstention in this case is treated like a "no" vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote "absent" or "count me as absent?" Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually "absent." That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, "point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be, "point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

1400 K Street, Sacramento, CA 95814
(916) 658-8200 | Fax (916) 658-8240
www.cacities.org

To order additional copies of this publication, call (916) 658-8200.

$10

Reference Guide to Motions

Type of Motion	**Second Required**	**Debatable**	**Amendable**	**Priority Over Pending Motion**	**Reconsidered**	**Interrupt Speaker**
Adjourn (*sine die*)	Y	*n/a*	*n/a*	Y	*n/a*	*n/a*
Amend or Substitute[1]	Y	Y	Y	Y	Y	*n/a*
Appeal	Y	Y	*n/a*	*n/a*	Y	Y
Call the Question[7]	Y	*n/a*	*n/a*	Y	*n/a*	*n/a*
Take up New Business Past 11:30 p.m.[8]	Y	Y	*n/a*	Y	*n/a*	*n/a*
Limit Debate	Y	*n/a*	Y	Y Except "table"	Y	*n/a*
Main Motion	Y	Y	Y	*n/a*	Y	*n/a*
Nominations	*n/a*	Y	*n/a*	*n/a*	*n/a*	*n/a*
Personal Privilege or Point of Order	*n/a*	*n/a*	*n/a*	Y	Y	Y
Postpone to Time Certain	Y	Y	Y	Y	Y	*n/a*
Previous Question	Y	*n/a*	*n/a*	Y	Y	*n/a*
Recess or Adjourn to Time Certain	Y	Y	Y	*n/a*	*n/a*	*n/a*
Reconsider	Y[2]	Y[3]	*n/a*	*n/a*	*n/a*	[4]
Table or Take From Table	Y	*n/a*	*n/a*	Y[5]	*n/a*	*n/a*
Take Up Out of Order	Y	*n/a*	*n/a*	*n/a*	*n/a*	*n/a*
Withdraw a Motion[6]	*n/a*	*n/a*	*n/a*	Y	Y	Y

"Y" indicates that this action can be taken, is necessary, is required, is permitted or is applicable
"n/a" indicates that this action cannot be taken, is unnecessary or is inapplicable

---

[1] Limit of three substitute motions.
[2] May only be made by a person who voted on prevailing side; not applicable to "table" motions. Must be made within two meetings of original action
[3] If prior motion was debatable.
[4] Except for request for later action.
[5] Highest subsidiary motion -- takes precedence over all motions except adjourn and privilege.
[6] Must be voted unless there is no objection.
[7] Requires 4/5 vote.
[8] Requires 4/5 vote.

Approved 05/02/2006
Resolution 06-62

Inder Khalsa, City Attorney

T 415.421.8484
F 415.421.8486
E ikhalsa@rwglaw.com

1 Sansome Street, Suite 2850
San Francisco, CA 94104-4811
rwglaw.com

MEMORANDUM

TO: Davis City Councilmembers, Commissioners, and Committee Members

FROM: Inder Khalsa, City Attorney

DATE: December 10, 2020

SUBJECT: Avoiding Bias in Official Decisions

I. Introduction

One of the primary goals of the American system of government is to make sure that public officials treat all people fairly while making official decisions. To ensure fairness in local government proceedings, public officials are legally prohibited from making decisions that are based on bias, or prejudice against a person or a group of people.

Allegations of bias often stem from an official's financial interest in a government decision. However, bias may also arise when an official publicly announces their personal opinion about an upcoming decision before participating in the official decision-making process. Officials must also make sure that they do not appear biased when making official decisions. Even if an official does not actually make a decision based on bias, the mere appearance of bias can damage public confidence in the fairness of local government.

The purpose of this memorandum is to provide City officials with an outline of the legal standards associated with due process and bias. For the purposes of this memorandum, all individuals involved in City decisionmaking are considered City officials. This includes councilmembers, commissioners, and committee members.[1] Please keep in mind that the following guidelines are not intended to stifle your free speech. Rather, they are intended to

[1] *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234 (In the context of bias in public hearings, only bias in "decisionmakers" is considered). City staff are not generally decisionmakers, as they serve an advisory role, but since councilmembers, commissioners, and committee members frequently make decisions on behalf of the City, they are considered decisionmakers; But see Cal. Gov't. Code §87200 (the Political Reform Act broadly defines "public official" as every member, officer, employee, or consultant of a local entity, in the context of financial conflicts of interest).

help you understand your obligations when you participate in City hearings and decisions. The key points are as follows:

- There are ***two types of government decisions***: (1) ***legislative decisions***, in which officials create general rules or policies that apply to everyone in their jurisdiction; and (2) ***adjudicatory decisions***, in which officials make determinations and rulings about certain cases, projects, or people. The rules are different for each type of decision.

- Generally, officials will not be disqualified from participating in legislative decisions based on prior statements or public advocacy.

- However, officials can be disqualified from participating in adjudicatory decisions based on prior statements or public advocacy. If an official who is or appears to be biased participates in an adjudicatory decision, the decision could be invalidated by a reviewing court.

- Officials who make verbal or written statements taking a position on an upcoming adjudicatory decision may be found to be biased, even if they do so anonymously.

- If you have previously taken a position or made a public statement that could suggest that you have made up your mind on a pending adjudicatory decision, you should seek legal advice from the City Attorney. We may advise you to recuse yourself and avoid participating in the decision-making process.

- In order to avoid allegations of bias, City officials should wait to make statements on proposals that are pending or likely to come before the City in the future, until a public meeting. Officials should be aware that public advocacy for or against a project or proposal could result in the official having to recuse from the decision-making process.

- Members of the public frequently contact officials to express opinions and to ask officials for their opinions on pending projects. Officials can avoid the appearance of bias by avoiding making any statements for or against a pending project. We advise you to listen to the opinions of members of the public, but explain that you have to wait until the public meeting to form a final opinion.

- You are strongly encouraged to share your opinions during public meetings. Just make sure you express your opinions during public meetings, rather than through outside communications.

- When public officials make decisions based on bias rather than the facts in the record and the testimony provided during the public process, it can negatively impact the public's perception of the fairness of the City's process. Avoiding bias or even the appearance of bias is important to maintain public trust in government processes.

I. Procedural Due Process: Fair Decision Making

Both the US Constitution and the California Constitution guarantee rights to ***procedural due process***. Procedural due process guarantees a person's right to notice and a fair hearing before public officials make a decision about the person's property or personal rights.[2] In the land use setting, it is not only the property owner that has due process rights -- neighbors and opponents of a project do as well.[3]

A fair hearing requires that all decision makers be "neutral and unbiased."[4] Therefore, if a city official is biased for or against the subject of a hearing, the official violates due process.[5] If a disappointed party dislikes the resulting decision and sues the city, they do not have to show that the official's decision was actually based on their alleged bias. It is enough to show that the official was *probably* biased when making the decision. As long as the person can show "an unacceptable probability of actual bias," the reviewing court can invalidate the decision because of the official's bias.[6] To avoid costly lawsuits and duplicative proceedings, officials should avoid making statements that could show bias, and officials who may be biased or who may appear biased against a person or project should not participate in decision-making procedures involving that person or project.

[2] U.S. Const., Amends. IV [no state shall "deprive any person of life, liberty, or property, without due process of law"], V [same as to federal government]; Cal. Const., Art. I §§ 7, 15.
[3] *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 615.
[4] *BreakZone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1234.
[5] *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022 (*Woody's Group*).
[6] *Id.*

II. Bias Rules for Legislative and Adjudicatory Decision Making Processes

Generally, all decisions made by local officials fall into one of two categories: (1) legislative and (2) adjudicatory. These two types of decisions are subject to different rules about due process and bias.

Legislative decisions involve the adoption of general rules or policies that apply to a number of people in a jurisdiction.[7] Legislative decisions are typically based on broad public policy determinations.[8] Examples of legislative decisions include consideration of a proposed ordinance, deciding whether to undertake a public project, consideration of a development agreement, or amendments to the general plan.

On the other hand, ***adjudicatory decisions*** involve determinations about a particular person, project, or case.[9] When a public official serves in an adjudicatory capacity, they act similarly to a judge; that is, they make a ruling about how the law applies to a specific set of circumstances. Adjudicatory decisions include a commissioner's decision of whether or not to approve an application for a land use entitlement or a permit, or a hearing officer's decision about whether a person has violated a provision of the municipal code.

Some decisions involve adjudicatory and legislative actions. For instance, development projects are often accompanied by a development agreement, zone change, or General Plan amendment. While approval of a development project is an adjudicatory decision, a General Plan amendment is a legislative decision. In these instances, the best practice is for public officials to approach all decisions as if they are adjudicative.

Courts distinguish between legislative and adjudicatory decisions when determining whether a decision should be overturned due to bias.[10] This is because procedural due process applies to adjudicatory decisions, but not to legislative decisions. While officials should still strive to be fair when participating in legislative decision making processes, a frustrated resident cannot typically sue to overturn a legislative decision based on an official's bias. When it comes to broad policy decisions, officials generally have the right to voice their opinion on legislative matters and issues of public policy and concern.[11]

---

[7] *Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1188 (*Beck*).
[8] *Id.*
[9] *Id.*
[10] *Id.*; see also *Wilson v. Hidden Valley Municipal Water Dist.* (1967) 256 Cal.App.2d 271, 287.
[11] *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 780.

However, when it comes to adjudicatory decisions, allowing even ***one*** "biased decision maker to participate in the decision is enough to invalidate the decision."[12]

III. Disqualifying Bias Due to Prior Public Advocacy

Courts have held that officials are biased or appear biased when they have publicly taken policy positions that suggest that they have already made a decision about an upcoming adjudicatory hearing.[13] This includes making verbal public statements in support or opposition of certain projects (or certain ***types*** of projects), as well as written policy statements published in articles, blog posts, or other writings that are published in the community. This is true even if the writing is published anonymously.

For example, in *Nasha v. City of Los Angeles*, the Planning Commission heard an appeal regarding a development project approved by the City Director of Planning.[14] Prior to the appeal hearing, a commissioner wrote an anonymous article in a local residents association's newsletter stating the project was a "threat to [the] wildlife corridor," though the commissioner never explicitly stated that the planning commission should deny the appeal.[15] The commissioner also advocated against the project at a neighborhood association meeting.[16] Regardless, the commissioner decided to participate in the appeal hearing because he did not discuss "this project in any substantive way…and there is no financial impact in any way."[17] The developer filed a request for reconsideration after learning the commissioner was the author of the article in the newsletter, but the Planning Commission refused to reconsider.[18]

The court held that the commissioner's authorship of the anonymous article was not merely "informational," even though the commissioner never explicitly advocated for or against the project.[19] His statement gave rise to an "unacceptable probability" of bias and he should have recused himself from the appeal hearing.[20] Accordingly, the court vacated the Planning Commission's decision and compelled a new appeal hearing on the project, three years after

[12] *Woody's Group*, *supra*, 233 Cal.App.4th at 1022.
[13] *Petrovich Development Company, LLC v. City of Sacramento* (2020) 48 Cal. App.5th 963, 974; *Woody's Group*, *supra*, 233 Cal.App.4th at 1022.
[14] *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 475.
[15] *Id.* at 484.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 478.
[19] *Id.* at 484.
[20] *Id*.

the initial decision.[21] The court also held that the developer could recover the costs of its appeal from the city.[22]

Given this precedent, public officials who have publicly taken a policy position that could affect any upcoming adjudicatory decisions are probably disqualified from participating in those adjudicatory decisions, and should recuse themselves.

Keep in mind, certain commissions sometimes consider the same project or proposal more than once. For instance, the Planning Commission may disapprove a project and following an appeal to Council, Council may remand back to the Planning Commission for further review. Other commissions may review different aspects of the same proposal over time or take actions to implement prior decisions. For example, a project may initially come to the City for general entitlements, with implementing actions coming later. While the statements that City officials make during deliberations at an adjudicative hearing generally do not give rise to bias concerns (it is expected that officials would express their opinions at that time), commissioners who engage in public advocacy regarding a proposal before that decision is final run the risk of having to recuse themselves from future decisions regarding that proposal.

It is important to note that public officials have a right to free speech, including speech that results in disqualifying bias. Officials who make the types of statements outlined here may deprive themselves of the right to participate in City decision-making, however.

IV. Conclusion

Public officials should ask questions and state opinions about all projects that come before their body. However, officials should avoid taking a position on projects or upcoming hearings before the public meeting. Those who have taken a position that could affect an upcoming decision about a particular case, project, permit, or person, should recuse themselves and avoid participating in the decision-making process. This includes officials who have made verbal or written statements advocating for or against a particular project (or types of projects).

If an official who has made disqualifying statements does not recuse themselves from participating in relevant adjudicatory decisions, affected parties may be able to successfully sue

[21] *Id.* at 486.
[22] *Id.*

the City for a due process violation. This could result in overturning the original decision, court-ordered duplicate proceedings, and City liability for the affected parties' court costs.

If you have any questions about whether a prior statement or position requires you to recuse from a decision, please feel free to contact me for legal advice.

13008-0001\2479890v4.doc