CITY OF DAVIS
COMMISSION HANDBOOK

APPENDIXES

JULY 2025

Davis
CALIFORNIA

REFERENCE GUIDE TO MOTIONS

Type of Motion	Sample Motion	Second Required	Debatable	Amendable	Priority Over Pending Motion	Reconsidered	Interrupt Speaker
Amend (Friendly Amendment) [1]	"I move to amend the motion by..."	✓	✓	✓	✓	✓	-
Call the Question[6]	"I call the question."	✓	-	-	✓	-	-
Take up New Business Past 11:30 p.m.[6]	"I move that we continue the meeting…"	✓	✓	-	✓	-	-
Main Motion	"I move that..."	✓	✓	✓	-	✓	-
Nominations	"I nominate.."	✓ -	✓	-	-	-	-
Personal Privilege	"Audience: Please take side conversation outside." *(noise, temperature, etc.)*	-	-	-	✓	-	✓
Point of Order	"Point of order to [enforce rule/procedure]."	-	-	-	✓	-	✓
Recess / Postpone / Adjourn to Time Certain	"I move to continue this item until.. (date)."	✓	✓	✓	✓	✓	-
Reconsider	"I move to reconsider the vote on..."	✓ [2]	✓ [3]	-	-	-	[4]
Substitute Motion[1]	"I move a substitute motion to.." "I move substitute substitute motion"	✓	✓	✓	✓	✓	✓
Table an Item (postpone indefinitely)	"I move to table..."	✓	-	-	✓ [5]	-	-
Withdraw a Motion	"I withdraw the motion ..."	-	-	-	✓	✓	✓

✓ indicates that this action can be taken, is necessary, is required, is permitted or is applicable
- indicates that this action cannot be taken, is unnecessary or is inapplicable

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[1] Limit of two substitute motions.
[2] May only be made by a person who voted on prevailing side; not applicable to "tabled" 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] Requires 4/5 vote.

Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

LEAGUE® OF CALIFORNIA CITIES

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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.

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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.

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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.

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2025

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, 2025

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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. Part One includes rules about calling and holding various types of meetings and closed sessions, as well as guidelines for how to avoid unlawful serial meetings. Part Two 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

PART ONE:

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, 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 (unless indicated otherwise, all statutory references herein are to the California Government Code). In a nutshell, the Brown Act requires local government business to be conducted at open and public meetings except in certain limited situations. This Handbook 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 government 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 also are subject to the Brown Act if they have either "continuing subject matter jurisdiction" or a meeting schedule fixed by formal action of the legislative body. § 54952(b). 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. § 54952(b). 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 for their meetings. When the agenda is posted at least 72 hours in advance, the meeting is considered to be a regular meeting for all purposes. § 54954(a). 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 in Section VIII of this Handbook.

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)(1). Additionally, charter schools and entities managing charter schools may also be subject to the Brown Act. Educ. Code, § 47604.1(b)(1).

Even before they assume the duties of office, persons who are elected to serve as members of a legislative body of a local agency are subject to the Brown Act. § 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 in § 54952.2(a), and the definition encompasses almost every gathering of a majority of legislative body members, including:

> "[A]ny congregation of a majority of the members of a legislative body at the same time and location, including [a] teleconference . . . to **hear, discuss, deliberate, or take action** on any item that is within the subject matter jurisdiction of the legislative body."

This 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 to vote or take action on the issue.

III. EXCEPTIONS TO "MEETING" DEFINITION

There are six types of gatherings that are not considered a legislative body "meeting" and 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 these exceptions, 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 Brown Act meeting that requires notice, a posted agenda, and a period for public comment.

A. Individual Contact Exception

Conversations, whether in person, by telephone, video conferencing, 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." § 54952.2(b)(1).

B. Seminar or Conference Exception

Attendance by a majority of the legislative body at a seminar, conference, or similar educational gathering generally is exempt from Brown Act requirements. § 54952.2(c)(2). However, for this exception to be applicable, 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 League of California 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 discusses among themselves items of specific business relating to their own local agency other than as part of the scheduled program.

C. 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." § 54952.2(c)(3). 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 specific business of their own local agency other than as part of the scheduled program.

In 2024, the California Attorney General issued an opinion declaring that some State of the City events constitute a "meeting" under the Brown Act when attended by a majority of city council members because council members are present at the same time and location to hear and potentially discuss an item within the council's subject matter jurisdiction. 107 Ops. Cal. Atty. Gen. 47. In the Attorney General's view, as a "meeting" of the city council, the meeting must comply with the Brown Act's open meeting requirements. However, the opinion left open the possibility for these events to qualify for the "community meeting" exception if members of the public have the ability to view the event in real time, in person, or via livestreaming, without paying to attend the event.

D. 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 specific business of their local agency among themselves other than as part of the scheduled meeting.

E. Social or Ceremonial Occasion Exception

The Brown Act also 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 specific business of their local agency.

F. Standing Committee Exception

This 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 quorum 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 non-committee 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

A. Permitted Locations of Meetings

The Brown Act generally requires regular and special 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.

B. Teleconferencing

The role of "teleconferencing," or using telephonic and/or video technology in public meetings, was expanded significantly during the COVID-19 pandemic.

Because the Brown Act relies on physical, in-person meetings as the primary means to achieve its goals of public participation and transparency, the law has traditionally limited a local agency's ability to use teleconferencing to hold public meetings. Generally, teleconferencing may only be used by members of a legislative body as a way to participate fully in the meeting from remote locations. If one or more members participate in a meeting via teleconferencing, the following "traditional teleconferencing requirements" apply to that meeting: (1) the remote location must be connected to the main meeting location by audio, video, or both; (2) the notice and agenda of the meeting must identify the remote location; (3) the agenda must be posted at the remote location; (4) the remote location must be accessible to the public; (5) all votes must be by roll call; and (6) 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 agency's jurisdiction, but other members may participate from outside the jurisdiction. §§ 54953(b), (j)(6). These teleconferencing rules only apply to members of the legislative body. Staff members, attorneys, and consultants may participate remotely without following the posting and public access requirements of the teleconferencing rules.

On March 17, 2020, Governor Newsom issued Executive Order ("EO") N-29-20, which temporarily relaxed these traditional teleconferencing requirements in response to the COVID-19 pandemic. EO N-29-20 and the Governor's COVID-19 state of emergency have expired, but recent amendments to the Brown Act, described below, now provide other alternatives to the traditional teleconferencing requirements under specific conditions. The Brown Act's traditional teleconferencing requirements remain available in lieu of the alternatives described below.

1) Assembly Bill ("AB") 361

AB 361 (2021), which was amended by AB 557 (2023), built upon EO N-29-20 to provide a statutory basis in the Brown Act for relaxed teleconferencing requirements during the COVID-19 declared emergency. As described below, however, there must be a proclaimed state of emergency for an agency to rely on AB 361. Because the Governor has since lifted the COVID-19 state of emergency as of February 28, 2023,[1] agencies will be unable to rely on AB 361 after that date absent a new emergency declaration, which does not have to be related to COVID-19.

The teleconferencing option authorized by AB 361 has been extended by the Legislature and will remain available indefinitely. AB 361 authorizes local agencies to continue meeting remotely *during a state of emergency proclaimed by the Governor* without

[1] *Governor Newsom Marks End of California's COVID-19 State of Emergency* (Feb. 28, 2023), available at: https://www.gov.ca.gov/2023/02/28/governor-newsom-marks-end-of-californias-covid-19-state-of-emergency/ (as of Dec. 22, 2023).

following the Brown Act's traditional teleconferencing requirements, including the requirement that meetings be conducted in physical locations, if the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. § 54953(e)(1)(A)-(B). A "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act. § 54953(j)(5).

AB 361 generally requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the legislative body, and to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 provides the following procedures and requirements for conducting remote meetings:

1. Public Comment Opportunities in Real Time: A legislative body that meets remotely pursuant to AB 361 must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time. Although the agency may still ask for public comments to be submitted in advance, the agency cannot require public comments to be submitted in advance of the meeting. § 54953(e)(2)(A),(C). Agencies may not close a public comment period until members of the public are given the opportunity to register and the time for that comment period has elapsed, whether it is for a specific agenda item or a general comment period. If an agency does not provide a timed public comment period, but takes public comment separately on each agenda item, it must allow a reasonable amount of time per agenda item to allow members of the public the opportunity to provide public comment, including time to register or "otherwise be recognized for the purpose of providing public comment." § 54953(e)(2)(E).

2. No Action During Disruptions: In the event of a disruption that prevents the local agency from broadcasting the remote meeting, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, AB 361 prohibits the legislative body from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored. § 54953(e)(2)(B).

3. Periodic Findings: To continue meeting remotely pursuant to AB 361, an agency must make periodic findings that: (1) the body has reconsidered the circumstances of the declared emergency; and (2) the emergency impacts the ability of the body's members to meet safely in person. § 54953(e)(3). These findings must be made not later than 45 days (previously 30 days) after teleconferencing for the first time pursuant to AB 361, and every 45 days (previously 30 days) thereafter. We recommend that after the agency makes these findings for the first time, it places on the

agenda (as a placeholder) "reconsideration" of the findings every 45 days thereafter. § 54953(e)(3).

2) Assembly Bill ("AB") 2449

AB 2449 (2022) provides alternate teleconferencing authority, separate from both the traditional teleconferencing requirements and the relaxed teleconferencing requirements during declared emergencies under AB 361. The provisions of AB 2449 are effective for a period of three years beginning January 1, 2023 and ending January 1, 2026. As of January 1, 2025, some AB 2449 provisions have been amended by AB 2302 (2024).

AB 2449 requires at least a quorum of the legislative body to participate in person from a singular, physical location that is clearly identified on the agenda, open to the public, and situated within the boundaries of the territory over which the agency exercises jurisdiction. The legislative body must provide either a two-way audiovisual platform or a two-way telephonic service and a live webcasting of the meeting as means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body. § 54953(f)(1). AB 2449 allows other individual members to participate remotely without posting agendas at all teleconference locations, identifying all such locations in the agendas, or making each teleconference location open to the public in two specified circumstances: (1) "just cause" or (2) "emergency circumstances."

"Just cause" means any of the following: (A) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a legislative body member to participate remotely; (B) a contagious illness that prevents a member from attending in person; (C) a need related to a physical or mental disability not otherwise accommodated by the agency's procedures for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the Americans with Disabilities Act; or (D) travel while on official business of the legislative body or another state or local agency. § 54953(j)(2).

To participate remotely for just cause, a member must notify the legislative body "at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause." § 54953(f)(2)(A)(i). This notification must include a general description of the circumstances relating to their need to appear remotely at the given meeting.

"Emergency circumstances" means a physical or family medical emergency that prevents a legislative body member from attending a meeting in person. § 54953(j)(1).

To participate remotely due to emergency circumstances, the member must submit a request to the legislative body and the legislative body must take action to approve the request. § 54953(f)(2)(A)(ii). If the legislative body does not approve the request, the member may not participate via teleconference under AB 2449 at that meeting other than as a member of the public. The legislative body must request a general description of the circumstances relating to the member's need to appear remotely at the given meeting. A general description need not exceed 20 words and does not require the

member to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law. A member should submit a request to participate remotely at a meeting due to emergency circumstances as soon as possible, and a separate request is required for each meeting in which a member seeks to participate remotely. § 54953(f)(2)(A)(ii)(I). The legislative body may approve such a request by a majority vote. §§ 54953(f)(2)(A)(ii)(II); 54954.2(b)(4). If the request is received at least 72 hours before a regular meeting, the legislative body's action on the request should be included on the agenda. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting, the legislative body may take action at the beginning of the meeting. § 54953(f)(2)(A)(ii)(II).

There are strict limits on how often the AB 2449 teleconferencing requirements may be used for individual members. For "just cause," legislative body members are only allowed to participate remotely up to two meetings per calendar year. § 54953(f)(2)(A)(i). Otherwise, members are only allowed to participate remotely up to the following limits (multiple sessions in one day are considered to be one meeting for purposes of calculating the remote participation limit):

- Two meetings per year if the body meets once per month or less;
- Five meetings per year if the body meets twice per month; or
- Seven times per year if the body meets three or more times per month.

At the meeting before any action is taken, members of the legislative body participating remotely pursuant to AB 2449 must publicly disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and must disclose the general nature of the member's relationship with any such individuals. § 54953(f)(2)(B). Members must also participate through both audio and visual technology to allow the public to remotely hear and visually observe them. § 54953(f)(2)(C).

Local agencies relying on AB 2449 must follow certain requirements for noticing and conducting remote meetings similar to those required by AB 361. Meeting notices and agendas must identify the means by which members of the public may access the meeting and offer public comment. § 54953(f)(1)(B). Meeting agendas must identify and include an opportunity for all persons to attend and address the legislative body directly via a call-in option, via an internet-based service option, and at the in-person location of the meeting. § 54953(f)(1)(C). In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body may not take any further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. § 54953(f)(1)(D). The legislative body may not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. § 54953(f)(1)(E).

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 conducted in a manner that complies with the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 ("ADA").

Local agencies must ensure that remote meetings are conducted in a manner that allows persons with a disability to participate to the fullest extent possible. The legislative body must have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the ADA and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body also must give notice of the procedure for receiving and resolving requests for accommodation. § 54953(g).

Relatedly, the agenda must 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(a)(1). If requested, the agenda and documents in the agenda packet also must be made available in alternative formats to persons with a disability. § 54954.1.

In 2024, the California Attorney General issued an opinion declaring that the ADA generally requires a local agency to allow remote participation by a legislative body member as a reasonable accommodation for a member with a qualifying disability that precludes in-person attendance at meetings of the body. 107 Ops. Cal. Atty. Gen. 107. The remote participation must be conducted in a manner that simulates in-person attendance at meetings held in-person at a location open to the public. To accomplish this requirement, individual members who participate remotely must (1) use two-way video and audio streaming in real time and must (2) disclose the identity of any adults who are present with the member at the remote location. *See* §§ 54953(f)(1)(A), 54953(f)(2)(B).

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 verbally announces the following prior to convening the simultaneous or successive meeting:

1. There is a subsequent legislative body;

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

3. The compensation or stipend is provided as a result of convening the multiple meetings.

However, the amount of compensation is not required to be announced if: (1) it is listed in a statute; and (2) the local agency has not authorized additional compensation. In any case, the announced "compensation" or "stipend" does not include amounts reimbursed for actual and necessary expenses incurred by a member in the performance of his or her official duties. Such expenses may include, but are not limited to, those related to travel, meals, and lodging. § 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 applies to individual contacts between two members of the legislative body (the individual contact exception to the "meeting" definition 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 the legislative body regarding an item of business that is within the subject matter jurisdiction of the legislative body. A serial meeting can occur even though a majority of legislative body members never gather in a room at the same time. For example, an email response concerning an agency's business circulating among a majority of the members of the legislative body, such as "reply to all," could be considered a serial meeting. A serial meeting 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 (e.g., "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).

Social media interactions between or among members of a legislative body can also raise serial meeting concerns. See Section VII(D) for a discussion of issues related to social media.

Observing the following guidelines can avoid inadvertent violation of the serial meeting prohibition.

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 of the legislative body. Staff briefings must therefore be handled carefully. To avoid having a staff briefing become a serial meeting:

- Staff briefings to 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 person's 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, members are advised to:

- 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 must 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, tell the person not to share your statements 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, email with or to staff members – are the most obvious means by which an illegal serial meeting can occur. This does not mean 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 agency business with a majority of the members of your legislative body and communicating the views of other legislative body members outside a meeting.

D. Contacts on Social Media

Social media engagement can also inadvertently lead to concerns of creating an illegal serial meeting in violation of the Brown Act. The statute was previously silent regarding

social media and its use by members of a legislative body, leading to uncertainty as to whether certain uses of social media could result in unintended violations. AB 992 (2020) amended certain provisions of the Brown Act, until January 1, 2026, to clarify allowable uses of social media.

A member of a legislative body may engage in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body. However, a majority of the members of the legislative body cannot use the internet-based social media platform to discuss among themselves business of a specific nature that is within the body's subject matter jurisdiction. Further, a member of the legislative body is prohibited from responding directly to any communication on an internet-based social media platform regarding a matter that is within the body's subject matter jurisdiction if the communication is made, posted, or shared by any other member of the legislative body. § 54952.2(b)(3)(A). Unlike other serial meeting restrictions that are invoked when there are contacts of a majority of the legislative body, this provision is triggered when there is interaction between as little as two members of a legislative body. For purposes of these provisions, such interaction includes commenting or using digital icons that express reactions to communications made by other members of the legislative body. § 54952.2(b)(3)(B)(i). Thus, "liking" a post or using a digital icon is considered a discussion under the Brown Act.

To avoid violations arising from social media engagement, members of a legislative body should avoid interacting on social media platforms with any other members of their legislative body regarding matters within the body's subject matter jurisdiction.

These suggested rules of conduct may seem unduly restrictive and impractical and may make acquiring 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 statute 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. Generally, 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 Transient 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 into 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 ruled that the Apple Valley Town Council's agenda description was insufficient. There, the 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 town violated the Brown Act by omitting the MOU from the agenda description because the omission meant that the public was given no notice of the item of business.

Furthermore, agendas should make clear whether items may be acted on or whether they are informational only. Thus, if an agenda for a meeting states that the legislative body will only "discuss" an item, the legislative body may not take an "action" on that item.

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 a planning commission's or a city council's proposed approval of a CEQA document, such as an environmental impact report or a negative declaration, is a distinct item of business separate from the item approving the project and must be expressly described in an agenda. *San Joaquin Raptor Rescue Center v. County of Merced*, 216 Cal. App. 4th 1167 (2013). In addition, one court has ruled that a planning commission's or a city council's consideration of a CEQA exemption is also a distinct item of business for purposes of the Brown Act. *G.I. Industries v. City of Thousand Oaks* 84 Cal. App. 5th 814 (2022) (ordered not published by California Supreme Court, February 15, 2023).

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 in a publicly accessible area, including in some cases on the local agency's website, at least 24 hours prior to the meeting. § 54956(a). 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, email 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. Additionally, a local agency with an internet website must send a website link to or a copy of the agenda or the full agenda packet by email, if a person requests that the documents be sent by email. 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(a)(3). 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. § 54954.2(b)(2). 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 five members of a five-member body are present, at least four members must vote to add the item; If four members of a five-member body are present, then at least three members must vote to add the item; if three members of a five-member body are present, all three members must vote to add the item . 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. § 54954.2(b)(1). For purposes of this exception, the term "emergency situation" refers to work stoppages or crippling disasters that severely impair public health, safety, or both.

AB 2449 (2022), discussed above, also allows a legislative body to act at the beginning of a meeting on a request from a member to participate in a meeting remotely due to emergency circumstances if the member's request to participate remotely does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. § 54953(f)(2)(A)(i)(II); § 54954.2(b)(4). The legislative body may approve such a request by a majority vote of the legislative body. § 54954.2(b)(4).

In addition to the 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 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. In no event, however, may a special meeting 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(c). 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)(3).

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). Also, although not required under the Brown Act, local agencies may consider reading written comments received into the public record by the city clerk, or their designee, subject to reasonable time and content limitations imposed in accordance with the requirements outlined below.

Some local agencies accomplish both public comment 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 leave 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 sometimes referred to as the "committee exception" - 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. 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 of the item presented to the full legislative body is different from the version of the item 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(a).

B. 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, public comment on non-agenda matters at a special meeting may be omitted. Additionally, unlike regular meetings, the "committee exception" (discussed above) does not apply to special meetings. *Preven v. City of Los Angeles*, 32 Cal. App. 5th 925, 936 (2019).

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. § 54954.3(b). 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. § 54954.3(b)(2). 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. 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 if the comments are disruptive, as described below.

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.

The presiding officer of a legislative body may remove an individual from a meeting for actual disruptive behavior if they first warn the individual that their behavior is disruptive and that failure to cease their disruptive behavior could result in removal from the meeting. § 54957.95(a). Behavior is disruptive only if it actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting. § 54957.95(b)(1). Disruptive behavior may include noncompliance with the legislative body's established rules of decorum, such as speaking out of turn or exceeding established time limits on how long an individual can speak on a particular topic during public comment. § 54957.95(b)(1)(A). If the individual disrupting the meeting is using force or a true threat of force — meaning serious enough that a reasonable observer would perceive the threat to be an actual threat to use force by the person making the threat — they may be removed without a prior warning to cease their behavior. § 54957.95.

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 legislative 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, 381 (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 legislative 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 website. 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.

There is a limited exception to the requirement regarding making a writing distributed to a majority of the legislative body less than 72 hours in advance of a meeting immediately available for public inspection at a physical location. § 54957.5(b)(2)(B). The exception only applies to materials that supplement an initial staff report or similar document containing an executive summary or the staff recommendation relating to that agenda item that was made available for public inspection at the office or location designated at least 72 hours before the meeting. The exception allows the agency to make the materials available for public inspection the next business day commencing at least 24 hours in advance of the meeting during regular hours if the agency posts the materials on the agency's website immediately upon distributing them to the majority of the body, making it clear they relate to the item at the upcoming meeting, and the agenda posted for all meetings of the legislative body contains the agency's website address.

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 Website at [WEBSITE ADDRESS]." Agencies should make these documents available online to the greatest extent possible, when public buildings or facilities are temporarily closed to public access.

- On the agency's website, 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 website.

- 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 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, 54956.75. Additionally, starting in 2025, AB 2715 (2024) authorizes a legislative body to hold a closed session on matters pertaining to a threat to critical infrastructure controls or critical infrastructure information related to cybersecurity. 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. For a litigation threat against a local agency made outside an open and public meeting to be discussed in closed session it must be included in the agenda packet made available upon request before the meeting. *Fowler v. City of Lafayette*, 46 Cal. App. 5th 360, 370 (2020), *as modified on denial of reh'g* (Mar. 11, 2020), *review denied* (July 22, 2020).

Moreover, there is a "safe harbor" for using prescribed language to describe closed session items on an agenda 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, 1207 (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 start in a different location 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 publicly report certain types of actions if they were taken and the vote on those actions. § 54957.1. This report typically is given orally at the meeting, but it may done in writing. 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. 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.

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. § 54960.1(b). 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. § 54960.1(c)(1). 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. § 54960.1(c)(2). 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(c).

Under Section 54960.2, prior to filing suit to obtain a judicial determination that an alleged Brown Act violation, 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. § 54960.2(a). Second, the legislative body may respond within 30 days, including responding with an unconditional commitment to cease and desist from, and not repeat the past action that is alleged to violate the Brown Act. § 54960.2(b). 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 same 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. § 54960.2(e). 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. Note that even where a plaintiff can satisfy the threshold procedural requirements, a Brown Act violation will not automatically invalidate the action taken by the legislative body absent a showing that the violation caused prejudice. *Martis Camp Cmty. Ass'n v. Cty. of Placer*, 53 Cal. App. 5th 569, 592 (2020).

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.

PART TWO:

THE RALPH M. BROWN ACT

Updated including changes effective January 1, 2025

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. Prohibited communications of local agency's legislative body; social media; exclusions from this chapter

(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.

(3) (A) Paragraph (1) shall not be construed as preventing a member of the legislative body from engaging in separate conversations or communications on an internet-based social media platform to answer questions, provide information to the public, or to solicit information from the public regarding a matter that is within the subject matter jurisdiction of the legislative body provided that a majority of the members of the legislative body do not use the internet-based social media platform to discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the legislative body. A member of the legislative body shall not respond directly to any communication on an internet-based social media platform regarding a matter that is within the subject matter jurisdiction of the legislative body that is made, posted, or shared by any other member of the legislative body.

(B) For purposes of this paragraph, all of the following definitions shall apply:

(i) "Discuss among themselves" means communications made, posted, or shared on an internet-based social media platform between members of a legislative body, including comments or use of digital icons that express reactions to communications made by other members of the legislative body.

(ii) "Internet–based social media platform" means an online service that is open and accessible to the public.

(iii) "Open and accessible to the public" means that members of the general public have the ability to access and participate, free of charge, in the social media platform without the approval of the social media platform or a person or entity other than the social media platform, including any forum and chatroom, and cannot be blocked from doing so, except when the internet-based social media platform determines that an individual violated its protocols or rules.

(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.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

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

(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 to members of legislative body of local agencies

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 otherwise applicable 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. If the legislative body of a local agency elects to use teleconferencing, the legislative body of a local agency shall comply with all of the following:

(A) All votes taken during a teleconferenced meeting shall be by roll call.

(B) The teleconferenced meetings shall be conducted 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.

(C) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(D) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations. 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 subdivisions (d) and (e).

(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 (Division 10 (commencing with Section 7920.000) 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.

(e) (1) The legislative body of a local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in either of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(B) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (A), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (D), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (D), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (D), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 45 days after teleconferencing for the first time pursuant to subparagraph (A) or (B) of paragraph (1), and every 45 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(4) This subdivision shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(f) (1) The legislative body of a local agency may use teleconferencing without complying with paragraph (3) of subdivision (b) if, during the teleconference meeting, at least a quorum of the members of the legislative body participates in person from a singular physical location clearly identified on the agenda, which location shall be open to the public and situated within the boundaries of the territory over which the local agency exercises jurisdiction and the legislative body complies with all of the following:

(A) The legislative body shall provide at least one of the following as a means by which the public may remotely hear and visually observe the meeting, and remotely address the legislative body:

(i) A two-way audiovisual platform.

(ii) A two-way telephonic service and a live webcasting of the meeting.

(B) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment.

(C) The agenda shall identify and include an opportunity for all persons to attend and address the legislative body directly pursuant to Section 54954.3 via a call-in option, via an internet-based service option, and at the in-person location of the meeting.

(D) In the event of a disruption that prevents the legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(2) A member of the legislative body shall only participate in the meeting remotely pursuant to this subdivision, if all of the following requirements are met:

(A) One of the following circumstances applies:

(i) The member notifies the legislative body at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for just cause, including a general description of the circumstances relating to their need to appear remotely at the given meeting. The provisions of this clause shall not be used by any member of the legislative body for more than two meetings per calendar year.

(ii) The member requests the legislative body to allow them to participate in the meeting remotely due to emergency circumstances and the legislative body takes action to approve the request. The legislative body shall request a general description of the circumstances relating to their need to appear remotely at the given meeting. A general description of an item generally need not exceed 20 words and shall not require the member to disclose any medical diagnosis or disability, or any personal

medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Chapter 1 (commencing with Section 56) of Part 2.6 of Division 1 of the Civil Code). For the purposes of this clause, the following requirements apply:

(I) A member shall make a request to participate remotely at a meeting pursuant to this clause as soon as possible. The member shall make a separate request for each meeting in which they seek to participate remotely.

(II) The legislative body may take action on a request to participate remotely at the earliest opportunity. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with paragraph (4) of subdivision (b) of Section 54954.2.

(B) The member shall publicly disclose at the meeting before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(C) The member shall participate through both audio and visual technology.

(3) (A) The provisions of this subdivision shall not serve as a means for any member of a legislative body to participate in meetings of the legislative body solely by teleconference from a remote location for more than the following number of meetings, as applicable:

(i) Two meetings per year, if the legislative body regularly meets once per month or less.

(ii) Five meetings per year, if the legislative body regularly meets twice per month.

(iii) Seven meetings per year, if the legislative body regularly meets three or more times per month.

(B) For the purpose of counting meetings attended by teleconference under this paragraph, a "meeting" shall be defined as any number of meetings of the legislative body of a local agency that begin on the same calendar day.

(g) The legislative body shall have and implement a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and resolving any doubt in favor of accessibility. In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the procedure for receiving and resolving requests for accommodation.

(h) The legislative body shall conduct meetings subject to this chapter consistent with applicable civil rights and nondiscrimination laws.

(i) (1) Nothing in this section shall prohibit a legislative body from providing the public with additional teleconference locations.

(2) Nothing in this section shall prohibit a legislative body from providing members of the public with additional physical locations in which the public may observe and address the legislative body by electronic means.

(j) For the purposes of this section, the following definitions shall apply:

(1) "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person.

(2) "Just cause" means any of the following:

(A) A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely. "Child," "parent," "grandparent," "grandchild," and "sibling" have the same meaning as those terms do in Section 12945.2.

(B) A contagious illness that prevents a member from attending in person.

(C) A need related to a physical or mental disability as defined in Sections 12926 and 12926.1 not otherwise accommodated by subdivision (g).

(D) Travel while on official business of the legislative body or another state or local agency.

(3) "Remote location" means a location from which a member of a legislative body participates in a meeting pursuant to subdivision (f), other than any physical meeting location designated in the notice of the meeting. Remote locations need not be accessible to the public.

(4) "Remote participation" means participation in a meeting by teleconference at a location other than any physical meeting location designated in the notice of the meeting. Watching or listening to a meeting via webcasting or another similar electronic medium that does not permit members to interactively hear, discuss, or deliberate on matters, does not constitute remote participation.

(5) "State of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(6) "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.

(7) "Two-way audiovisual platform" means an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function.

(8) "Two-way telephonic service" means a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.

(9) "Webcasting" means a streaming video broadcast online or on television, using streaming media technology to distribute a single content source to many simultaneous listeners and viewers.

(k) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

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 (Division 10 (commencing with Section 7920.000) 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 54953.8. Open meetings: teleconferences: neighborhood councils

(a)(1) An eligible legislative body may use teleconferencing without complying with paragraph (3) of subdivision (b) of Section 54953 if the eligible legislative body complies with paragraphs (2) to (4), inclusive.

(2) An eligible legislative body may only use teleconferencing as described in this section after all the following have occurred:

(A) The city council for a city described in subdivision (c) considers whether to adopt a resolution to authorize eligible legislative bodies to use teleconferencing as described in paragraph (1) at an open and regular meeting.

(B) If the city council adopts a resolution described in subparagraph (A), an eligible legislative body may elect to use teleconferencing pursuant to this section if two-thirds of the eligible legislative body votes to do so. The eligible legislative body shall notify the city council if it elects to use teleconferencing pursuant to this section and its justification for doing so.

(C) Upon receiving notification from a legislative body as described in subparagraph (B), the city council may adopt a resolution to prohibit the eligible legislative body from using teleconferencing pursuant to this section.

(3) After completing the requirements in paragraph (2), an eligible legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the eligible legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option.

(B) In the event of a disruption that prevents the eligible legislative body from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the eligible legislative body's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the eligible legislative body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption that prevents the eligible legislative body from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(C) The eligible legislative body shall not require public comments to be submitted in advance of the meeting and shall provide an opportunity for the public to address the legislative body and offer comment in real time.

(D) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the eligible legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(E) (i) An eligible legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (D), to provide public comment until that timed public comment period has elapsed.

(ii) An eligible legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (D), or otherwise be recognized for the purpose of providing public comment.

(iii) An eligible legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (D), until the timed general public comment period has elapsed.

(F) At least a quorum of the members of the eligible legislative body shall participate from locations within the boundaries of the city in which the eligible legislative body is established.

(G) At least once per year, at least a quorum of the members of the eligible legislative body shall participate in person from a singular physical location that is open to the public and within the boundaries of the eligible legislative body.

(4) An eligible legislative body that holds a meeting pursuant to this subdivision shall do the following, as applicable:

(A) If the meeting is during regular business hours of the offices of the city council member that represents the area that includes the eligible legislative body, the eligible legislative body shall provide a publicly accessible physical location from which the public may attend or comment, which shall be the offices of the city council member who represents the area where the eligible legislative body is located, unless the eligible legislative body identifies an alternative location.

(B) If the meeting is outside regular business hours, the eligible legislative body shall make reasonable efforts to accommodate any member of the public that requests an accommodation to participate in the meeting. For the purposes of this subparagraph, "accommodation" means providing a publicly accessible physical location for the member of the public to participate from, providing access to technology necessary to participate in the meeting, or identifying locations or resources available that could provide the member of the public with an opportunity to participate in the meeting.

(b) The legislative body shall comply with all other requirements of Section 54953.

(c) As used in this section, "eligible legislative body" means a neighborhood council that is an advisory body with the purpose to promote more citizen participation in government and make government more responsive to local needs that is established pursuant to the charter of a city with a population of more than 3,000,000 people that is subject to this chapter.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

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 non-adversarial 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 a local agency has an internet website, the legislative body or its designee shall email a copy of, or website link to, the agenda or a copy of all the documents constituting the agenda packet if the person requests that the item or items be delivered by email. If the local agency determines it is technologically infeasible to send a copy of all documents constituting the agenda packet or a link to a website that contains the documents by email or by other electronic means, the legislative body or its designee shall send by mail a copy of the agenda or a website link to the agenda and mail a copy of all other documents constituting the agenda packet in accordance with the mailing requirements established pursuant to this section. 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 website, 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 website, the following provisions shall apply:

(A) An online posting of an agenda shall be posted on the primary internet website home page 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 website 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 website home page 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 website 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 their 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.

(4) To consider action on a request from a member to participate in a meeting remotely due to emergency circumstances, pursuant to Section 54953, if the request does not allow sufficient time to place the proposed action on the posted agenda for the meeting for which the request is made. The legislative body may approve such a request by a majority vote of the legislative body.

(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 website, 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.

(e) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

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 decision making 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

or she 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 re-continued 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; posting 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 person(s) who is 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 Managed Health Care 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 or 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 (Division 10 (commencing with Section 7920.000) 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, Clean Power Alliance of Southern California; 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 local agency member 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 local agency member for purposes of obtaining advice on whether the matter has direct financial or liability implications for that local agency member.

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

(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) (1) In addition to the authority described in subdivision (a), the Clean Power Alliance of Southern California or its successor entity, may adopt a policy or a bylaw or include in its joint powers agreement a provision that authorizes both of the following:

(A) A designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and who is attending a properly noticed meeting of the Clean Power Alliance of Southern California or its successor entity, in lieu of a local agency member's regularly appointed member to attend closed sessions of the Clean Power Alliance of Southern California or its successor entity.

(B) All information that is received by a designated alternate member of the legislative body of the Clean Power Alliance of Southern California or its successor entity, who is not a member of the legislative body of a local agency member and that is presented to the Clean Power Alliance of Southern California or its successor entity, in closed session, shall be confidential. However, the designated alternate member may disclose information obtained in a closed session that has direct financial or liability implications for the local agency member for which the designated alternate member attended the closed session, to the following individuals:

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

(ii) Members of the legislative body of the local agency present in a closed session of that local agency member.

(2) If the Clean Power Alliance of Southern California or its successor entity, adopts a policy or bylaw or includes in its joint powers agreement a provision authorized pursuant to paragraph (1), the Clean Power Alliance of Southern California or its successor entity, shall establish policies to prevent conflicts of interest and to address breaches of confidentiality that apply to a designated alternate member who is not a member of the legislative body of a local agency member who attends a closed session of the Clean Power Alliance of Southern California or its successor entity.

(c) 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) or (b), 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) or paragraph (1) of subdivision (b).

(d) This section shall remain in effect only until January 1, 2025 and as of that date is repealed.

Section 54956.97. Public bank; governing board or committee of governing board; closed session

Notwithstanding any provision of law, the governing board or a committee of the governing board of a public bank, as defined in Section 57600 of the Government Code, may meet in closed session to consider and take action on matters pertaining to all of the following:

(a) A loan or investment decision.

(b) A decision of the internal audit committee, the compliance committee or the governance committee.

(c) A meeting with a state or federal regulator.

Section 54956.98. Public bank; policy or bylaw; information from a closed session considered confidential

(a) For purposes of this section, the following definitions shall apply:

(1) "Shareholder, member, or owner local agency" or "shareholder, member, or owner" means a local agency that is a shareholder of a public bank.

(2) "Public bank" has the same meaning as defined in Section 57600.

(b) The governing board of a public bank may adopt a policy or a bylaw or include in its governing documents provisions that authorize any of the following:

(1) All information received by a shareholder, member or owner of the public bank in a closed session related to the information presented to the governing board of a public bank in closed session shall be confidential. However, a member of the governing board of a shareholder, member or owner 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 shareholder, member or owner local agency for purposes of obtaining advice on whether the matter has direct financial or liability implications for that shareholder local agency.

(B) Other members of the governing board of the local agency present in a closed session of that shareholder, member or owner local agency.

(2) A designated alternate member of the governing board of the public bank who is also a member of the governing board of a shareholder, member or owner of the local agency and who is attending a properly noticed meeting of the public bank governing board in lieu of a shareholder, member or owner of the local agency's regularly appointed member may attend a closed session of the public bank governing board.

(c) If the governing board of a public bank adopts a policy or a bylaw or includes provisions in its governing documents pursuant to subdivision (b), then the governing board of the shareholder, member or owner of the local agency, 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 public bank governing board pursuant to paragraph (1) of subdivision (b).

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

(a) This chapter does not 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 other law enforcement or security personnel, 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, a threat to the public's right of access to public services or public facilities, or a threat to critical infrastructure controls or critical infrastructure information relating to cybersecurity.

(2) For purposes of this subdivision, the following definitions apply:

(A) "Critical infrastructure controls" means networks and systems controlling assets so vital to the local agency that the incapacity or destruction of those networks, systems, or assets would have a debilitating impact on public health, safety, economic security, or any combination thereof.

(B) "Critical infrastructure information" means information not customarily in the public domain pertaining to any of the following:

(i) Actual, potential, or threatened interference with, or an attack on, compromise of, or incapacitation of critical infrastructure controls by either physical or computer-based attack or other similar conduct, including, but not limited to, the misuse of, or unauthorized access to, all types of communications and data transmission systems, that violates federal, state, or local law or harms public health, safety, or economic security, or any combination thereof.

(ii) The ability of critical infrastructure controls to resist any interference, compromise, or incapacitation, including, but not limited to, any planned or past assessment or estimate of the vulnerability of critical infrastructure.

(iii) Any planned or past operational problem or solution regarding critical infrastructure controls, including, but not limited to, repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to interference, compromise, or incapacitation of critical infrastructure controls.

(b) (1) Subject to paragraph (2), this chapter does not 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 their 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 (Division 10 (commencing with Section 7920.000) 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) Agendas of public meetings are disclosable public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be made available upon request without delay and in compliance with Section 54954.2 or Section 54956, as applicable. However, this section shall not apply to a writing, or portion thereof, that is exempt from public disclosure.

(b) (1) If a writing is a public record related to an agenda item for an open session of a regular meeting of the legislative body of a local agency and is distributed to all, or a majority of all, of the members of a legislative body of a local agency by a person in connection with a matter subject to a discussion or consideration at an open meeting of the body less than 72 hours before 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) Except as provided in subparagraph (B), a local agency shall comply with both of the following requirements:

(i) 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.

(ii) A local agency shall list the address of the office or location designated pursuant to clause (i) on the agendas for all meetings of the legislative body of that agency.

(B) A local agency shall not be required to comply with the requirements of subparagraph (A) if all of the following requirements are met:

(i) An initial staff report or similar document containing an executive summary and the staff recommendation, if any, relating to that agenda item is made available for public inspection at the office or location designated pursuant to clause (i) of subparagraph (A) at least 72 hours before the meeting.

(ii) The local agency immediately posts any writing described in paragraph (1) on the local agency's Internet Website in a position and manner that makes it clear that the writing relates to an agenda item for an upcoming meeting.

(iii) The local agency lists the web address of the local agency's internet website on the agendas for all meetings of the legislative body of that agency.

(iv) (I) Subject to subclause (II), the local agency makes physical copies available for public inspection, beginning the next regular business hours for the local agency, at the office or location designated pursuant to clause (i) of subparagraph (A).

(II) This clause is satisfied only if the next regular business hours of the local agency commence at least 24 hours before that meeting.

(c) Writings that are public records described in subdivision (b) and 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 7922.530, 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 (Division 10 (commencing with Section 7920.000) of Title 1), including, but not limited to, the ability of the public to inspect public records pursuant to Section 7922.525 and obtain copies of public records pursuant to either subdivision (b) of Section 7922.53 or Section 7922.535. 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 54957.95 Removal of Disruptive Individuals

(a) (1) In addition to authority exercised pursuant to Sections 54954.3 and 54957.9, the presiding member of the legislative body conducting a meeting or their designee may remove, or cause the removal of, an individual for disrupting the meeting.

(2) Prior to removing an individual, the presiding member or their designee shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding member or their designee may then remove the individual if they do not promptly cease their disruptive behavior. This paragraph does not apply to any behavior described in subparagraph (B) of paragraph (1) of subdivision (b).

(b) As used in this section:

(1) "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, one of the following:

(A) A failure to comply with reasonable and lawful regulations adopted by a legislative body pursuant to Section 54954.3 or any other law.

(B) Engaging in behavior that constitutes use of force or a true threat of force.

(2)"True threat of force" means a threat that has sufficient indicia of intent and seriousness, that a reasonable observer would perceive it to be an actual threat to use force by the person making the threat.

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 attorneys' 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 attorneys' fees

A court may award court costs and reasonable attorneys' 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 attorneys' 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 attorneys' 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.

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LEAGUE OF CALIFORNIA CITIES

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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 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 or videoconference.

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. Social Media posts, comments, and "likes" can result in a Brown Act violation. 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, and some state legislatures have banned the practice. On the other hand, widespread video streaming and videoconferencing of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to ensure 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 multimember 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 and staff. 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 limits on the time allotted to each speaker. For more information, see chapter 4.

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.

Some 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 businesslike, 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.
- The right of the press to fully understand and communicate public agency decision-making.

A detailed 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 to 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.

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.

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 are 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.

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 titled "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.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **https://www.calcities.org/home/resources/open-government2**. A current version of the Brown Act may be found at **https://leginfor.legislature.ca.gov**.

ENDNOTES

1 Cal. Gov. Code, § 54950.

2 Cal. Const., Art. 1, § 3, subd. (b)(1).

3 Cal. Gov. Code, § 54953, subd. (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 Const., Art. 1, § 3, subd. (b)(2).

5 Cal. Gov. Code, § 54952.2, subds. (b)(2) and (c)(1); Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533.

6 Cal. Gov. Code, § 54953.7.

Chapter 2

LEGISLATIVE BODIES

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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 following:

- 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]
- **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.

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.

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 committees on budget and finance or on public safety that are not limited in duration or scope, 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] A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.[12] For more information, see chapter 3.
- 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.[13] These include some nonprofit corporations created by local agencies.[14] 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.[15] 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.[16]

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 nonexempt 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."

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) first leased under Health and Safety Code subsection 32121(p) after Jan. 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.[17]

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.[18] 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.[19]
- 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.[20]

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 is not subject to the Brown Act since such assemblies are not those of a legislative body.[21]
- 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.[22]
- County central committees of political parties are also not Brown Act bodies.[23]

Legal counsel for a governing body is not a member of the governing body, therefore, the Brown Act does not apply to them. But counsel should take care not to facilitate Brown Act violations by members of the governing body.[24]

ENDNOTES

1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.

2 Cal. Gov. Code, § 54952, subds. (a) and (b).

3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 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 Cal. Gov. Code, § 54952.1.

8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.

9 Cal. Gov. Code, § 54952, subd. (b)

10 79 Ops.Cal.Atty.Gen. 69 (1996).

11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.

12 Cal. Gov. Code § 54952, subd. (c)(6).

13 Cal. Gov. Code, § 54952, subd. (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 nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).

14 Cal. Gov. Code, § 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).

15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300 fn. 5.

16 *"The Brown Act, Open Meetings for Local Legislative Bodies,"* California Attorney General's Office (2003), p. 7.

17 Cal. Gov. Code, § 54952, subd. (d).

18 Cal. Gov. Code, § 54952, subd. (b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

19 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129.

20 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).

21 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879.

22 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513.

23 59 Ops.Cal.Atty.Gen. 162, 164 (1976).

24 *GFRCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal.App.5th 1295, 1323; *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95, 105 (a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting).

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Chapter 3

MEETINGS

The Brown Act only applies to meetings of local legislative bodies. It defines a meeting as "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 their 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, as 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 reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, 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. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.*

Q. May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?

A. *No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.*

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, trying to influence the outcome of proceedings before a subordinate body, or discussing the merits with interested parties.

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 that 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, and they must sit where members of the public sit).[9]

Q. The legislative body establishes a standing committee of two of its five members that 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.*

Q. Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?

A. *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*

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 attend the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. As 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. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

Retreats, trainings, and workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, 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 include only a portion of a legislative body, but eventually they comprise 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.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

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, 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 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 is violated, however, if several one-on-one meetings or conferences lead 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?"

The lobbyist and the reporter are facilitating a violation of the Brown Act. 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."

PRACTICE TIP: When briefing legislative body members, staff must exercise care not to disclose other members' views and positions.

The planning director should not disclose Jones' prospective vote, and Kim should not disclose the prospective votes of two colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

Q. Various social media platforms and websites include forums where agency employees and officials can 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 all" option that may inadvertently result in a Brown Act violation. Staff should consider using the "bcc" (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to "reply all."

Social media should also be used with care. A member of the legislative body cannot respond directly to any communication on an internet-based social media platform that is made, posted, or shared by any other member of the legislative body. This applies to matters within the subject matter jurisdiction of the legislative body. For example, if one member of a legislative body "likes" a social media post of one other member of the same body, that could violate the Brown Act, depending on the nature of the post.[19]

Finally, electronic communications (such as text messaging) among members of a legislative body during a public meeting should be discouraged. If such communications are sent to a majority of members of the body, either directly or through an intermediary, on a matter on the meeting agenda, that could violate the Brown Act. Electronic communications sent to less than a majority of members of the body during a quasi-judicial proceeding could potentially raise due process concerns, even if not per se prohibited by the Brown Act. Additionally, some legislative bodies have rules governing electronic communications during meetings of the legislative body and how their members should proceed if they receive a communication on an agenda item that is not part of the record or not part of an agenda packet.

Informal gatherings

Members of legislative bodies are often 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.[20] A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

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 does not lessen the potential for a violation of the Brown Act.

Technological conferencing

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

Except for certain non-substantive 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 modern 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.[21] 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."[22] 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:[23]

- 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.
- 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 an open, noticed, and posted teleconference location.*

Until Jan. 1, 2026, teleconferencing may also be used on a limited basis where a member indicates their need to participate remotely for "just cause" (e.g., childcare or a contagious illness) or due to "emergency circumstances" (e.g., a physical or family medical emergency). This teleconferencing option has extremely detailed requirements, and careful review is needed. If the City experiences a technical issue that prevents members of the public from viewing the meeting and/or offering comments virtually, then no further action can be taken until the technical issue is resolved.[24]

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.[25]

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:[26]

- 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.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.[27]

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.[28] 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.[29]

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.[30] State law has also allowed for virtual meetings under certain emergency situations.[31]

ENDNOTES

1 Cal. Gov. Code, § 54952.2, subd. (a).

2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870.

3 Cal. Gov. Code, § 54954, subd. (a).

4 Cal. Gov. Code, § 54956.

5 Cal. Gov. Code, § 54956.5.

6 Cal. Gov. Code, § 54955.

7 Cal. Gov. Code, § 54952.2, subd. (c).

8 Cal. Gov. Code, § 54952.2, subd. (c)(4).

9 Cal. Gov. Code, § 54952.2, subd. (c)(6). See 81 Ops.Cal.Atty.Gen. 156 (1998).

10 Cal. Gov. Code, § 54953.1.

11 "*The Brown Act,*" California Attorney General (2003), p. 10.

12 Cal. Gov. Code, § 54952.2, subd. (b)(1).

13 *Stockton Newspapers, Inc. v. Redevelopment Agency* of the City of Stockton (1985) 171 Cal.App.3d 95.

14 Cal. Gov. Code, § 54952.2, subd. (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 Cal. Gov. Code, § 54957.5, subd. (a).

18 Cal. Gov. Code, § 54952.2, subd. (b)(2).

19 Cal. Gov. Code, § 54952.2, subd. (b)(3).

20 Cal. Gov. Code, § 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964).

21 Cal. Gov. Code, § 54953, subd. (b)(1).

22 Cal. Gov. Code, § 54953, subd. (b)(4).

23 Cal. Gov. Code, § 54953. Until Jan. 1, 2024, the legislative body could use teleconferencing "during a proclaimed state of emergency" by the Governor in specified circumstances, and teleconference locations were exempt from certain requirements, such as identification in and posting of the agenda.

24 Cal Gov. Code, § 54953, subd. (f) (which will become Govt. §54953(e) as of Jan. 1, 2024).

25 Cal. Gov. Code, § 54954, subd. (b).

26 Cal. Gov. Code, § 54954, subd. (b)(1)-(7).

27 94 Ops.Cal.Atty.Gen. 15 (2011).

28 Cal. Gov. Code, § 54954, subd. (c).

29 Cal. Gov. Code, § 54954, subd. (d).

30 Cal. Gov. Code, § 54954, subd. (e).

31 Cal. Gov. Code, § 54953, subd. (e) (exp. January 1, 2026).

Chapter 4

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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 open and 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 that 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] For these reasons, obvious website technical difficulties might 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] For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a "project" must be avoided if the "project" is actually a set of distinct actions, in which case each action must be listed separately on the agenda.[10] For example, the listing of an "initiative measure" alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.[11]

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.
- Consideration of a 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 is listed on the agenda.

Is this permissible?

A. *Yes, as 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.[12] 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 or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, 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.[13]

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 each radio and television station that has requested such notice in writing. This notice must be delivered at least 24 hours before the time of the meeting by personal delivery or any other means that ensures receipt.

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, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).[14]

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: at a site that is freely accessible to the public, and 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.[15]

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.[16] 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.[17] 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.[18]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[19] 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.[20]

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.[21] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[22] 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 can address the board on those items.[23]

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.[24] Although 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.[25] 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:[26]

- 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.
- 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 their own activities.[27] 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 PowerPoint 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 Jefferson 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.[28]

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.[29] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[30]

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.[31]

Action by secret ballot, whether preliminary or final, is flatly prohibited.[32]

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.[33]

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 or disrupt proceedings.[34] Ejection is justified only when audience members actually disrupt the proceedings,[35] or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).[36] 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 readmit an individual or individuals not responsible for the disturbance.[37]

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.[38] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[39]

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 nonexempt or otherwise non-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.[40] The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.[41]

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.
- After the meeting if prepared by some other person.[42]

This requirement does not prevent assessing a fee or deposit for providing a copy of a public record pursuant to the California Public Records Act except where required to accommodate persons with disabilities.[43]

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.[44] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[45]

In addition, the public is specifically allowed to use audio or videotape recorders or still or motion picture cameras at a meeting to record meetings of legislative bodies, absent a reasonable finding by the body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[46]

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.[47]

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.

The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as 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.[48]

Q. Must the legislative body allow members of the public to show videos or make a PowerPoint 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 Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.[49] However, this prohibition does not provide immunity for defamatory statements.[50]

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 purely 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 where relevant to the governing of the agency and an implicit criticism of the incumbents' performance of city business.*

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.[51] 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.[52]

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 regular (but not special) 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.[53]

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.[54]

ENDNOTES

1 Cal. Gov. Code, § 54954.2, subd. (a)(1).

2 78 Ops.Cal.Atty.Gen. 327 (1995).

3 88 Ops.Cal.Atty.Gen. 218 (2005).

4 Cal. Gov. Code, §§ 54954.2, subd. (a)(1) and 54954.2, subd. (d).

5 Cal. Gov. Code, § 54960.1, subd. (d)(1).

6 99 Ops.Cal.Atty.Gen. 11 (2016).

7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432.

8 99 Ops.Cal.Atty.Gen. 11 (2016).

9 Cal. Gov. Code, § 54954.2, subd. (a)(1).

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of California Environmental Quality Act [CEQA] action [mitigated negative declaration] without specifically listing it on the agenda violates the Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis). See also *GI Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814 (depublished) (Brown Act requires CEQA finding of exemption to be listed on agenda items that are projects under CEQA).

11 *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194.

12 Cal. Gov. Code, § 54954.5.

13 Cal. Gov. Code, § 54954.1.

14 Cal. Gov. Code, §§ 36934; 54956, subd. (b).

15 Cal. Gov. Code, § 54956, subds. (a) and (c).

16 Cal. Gov. Code, § 54955.

17 Cal. Gov. Code, § 54954.2, subd. (b)(3).

18 Cal. Gov. Code, § 54955.1.

19 Cal. Gov. Code, § 54956.5.

20 Cal. Gov. Code, § 54952.3.

21 Cal. Edu. Code, §§ 35144, 35145, and 72129.

22 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.

23 Cal. Edu. Code, § 35145.5

24 Cal. Edu. Code, § 54954.6

25 See Cal. Const. Art. XIIIC, XIIID; Cal. Gov. Code, § 54954.6, subd. (h).

26 Cal. Gov. Code, § 54954.2, subd. (b).

27 Cal. Gov. Code, § 54954.2, subd. (a)(2); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239 (six-minute colloquy on non-agenda item with staff answering questions and advising that matter could be placed on future agenda fell within exceptions to discussing or acting upon non-agenda items).

28 Cal. Gov. Code, § 54953.3.

29 Cal. Gov. Code, § 54961, subd. (a); Cal. Gov. Code, § 11135, subd. (a).

30 Cal. Gov. Code, § 54952.2, subd. (c)(2).

31 Cal. Gov. Code, § 54953, subd. (b).

32 Cal. Gov. Code, § 54953, subd. (c).

33 Cal. Gov. Code, § 54953, subd. (c)(2).

34 Cal. Gov. Code, §§ 54957.9, 54957.95.

35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward 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); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as "likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting").

36 Cal. Gov. Code, § 54957.95.

37 Cal. Gov. Code, § 54957.9.

38 Cal. Gov. Code, § 54957.5.

39 Cal. Gov. Code, § 54957.5, subd. (d).

40 Cal. Gov. Code, § 54957.5(b); see also *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.

41 Cal. Gov. Code § 54957.5.

42 Cal. Gov. Code, § 54957.5, subd. (c).

43 Cal. Gov. Code, § 54957.5, subd. (d).

44 Cal. Gov. Code, § 54953.5, subd. (b).

45 Cal. Gov. Code, § 54957.5, subd. (d).

46 Cal. Gov. Code, § 54953.5, subd. (a).

47 Cal. Gov. Code, § 54953.6.

48 Cal. Gov. Code, § 54954.3, subd. (a).

49 Cal. Gov. Code, § 54954.3, subd. (c); Acosta v. City of Costa Mesa (9th Cir. 2013) 718 F.3d 800.

50 Cal. Gov. Code, § 54954.3, subd. (c).

51 *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (public comment time limit of three minutes for each speaker did not violate First Amendment).

52 Cal. Gov. Code, § 54954.3. subd. (b); *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992).

53 Cal. Gov. Code, § 54954.3, subd. (a); *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925.

54 Cal. Gov. Code, § 54954.3, subd. (a).

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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. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, 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]

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.

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 applies 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.

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 put on the agenda 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 that 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, multijurisdictional 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] The legislative body must take public comment on the closed session item before convening in a closed session.

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.

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 vary 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, as 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.

Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.[13] The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, 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.*[19]

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.[20]

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.[21] 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. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.[22]

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, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[23] 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.[24] 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.[25]

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,[26] and the names of the parties with whom its negotiator may negotiate.[27]

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.[28]

"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.

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.

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."[29] 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.[30] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[31] That authority may be delegated to a subsidiary appointed body.[32]

An employee must be given at least 24 hours' notice of any closed session convened to hear specific complaints or charges against them. 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,[33] 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.[34] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[35] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[36]

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.[37]

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.[38] 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.[39] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, 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. That means, among other things, 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.

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.[40] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[41]

> **"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 must be exercised not to discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

PRACTICE TIP: The personnel exception specifically prohibits discussion or action on proposed compensation in closed session except for a disciplinary reduction in pay.

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,[42] on employee salaries and fringe benefits for both represented ("union") and unrepresented 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.[43]

PRACTICE TIP: Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

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.

During its discussions with representatives on salaries and fringe benefits, the legislative body may 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.[44]

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.[45] 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.
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.[46]

Public participation under the Rodda Act also takes another form.[47] 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.[48] 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.[49]

PRACTICE TIP: Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act.

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.[50] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[51]

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.[52]

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 it, the body must deny the license in public, either 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.[53]

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.[54] 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 ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[55]

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.[56]

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:[57]

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 that is not generally known to the public or competitors and that (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.[58]

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 review the Brown Act carefully 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,[59] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[60] 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,[61] 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,[62] 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.[63]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[64]

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 or essential role in the closed session subject matters must be excluded from closed sessions.[65]

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.[66] 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.[67] Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.[68]

PRACTICE TIP: There is a strong interest in protecting the confidentiality of proper and lawful closed sessions.

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 regarding pending litigation that was received during a closed session,[69] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[70] 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, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.[71]

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.[72]

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.[73] 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 Cal. Gov. Code, § 54962.

2 Cal. Const. , Art. 1, § 3.

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see Cal. Gov. Code, § 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 Cal. Gov. Code, § 54957.1.

5 Cal. Gov. Code, § 54954.5.

6 Cal. Gov. Code, § 54954.2.

7 Cal. Gov. Code, § 54954.5.

8 Cal. Gov. Code, §§ 54956.9, 54957.7.

9 Cal. Gov. Code, § 54957.1, subd. (a).

10 Cal. Gov. Code, § 54957.1, subd. (b).

11 Cal. Gov. Code, § 54957.2.

12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal. Code Regs. § 18707.

13 But see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 (protection of the attorney-client privilege alone cannot by itself be the reason for a closed session).

14 Cal. Gov. Code, § 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 Cal. Gov. Code, § 54956.9, subd. (g).

19 See e.g., Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785; Trancas Property Owners Assn. v. City of Malibu (2006) 138 Cal.App.4th 172.

20 *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.

21 Cal. Gov. Code, § 54956.9, subd. (e).

22 Fowler v. City of Lafayette (2020) 46 Cal.App.5th 360.

23 Cal. Gov. Code, § 54957.1.

24 Cal. Gov. Code, § 54956.8.

25 *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).

26 73 Ops.Cal.Atty.Gen. 1 (1990).

27 Cal. Gov. Code, §§ 54956.8, 54954.5, subd. (b).

28 Cal. Gov. Code, § 54957.1, subd. (a)(1).

29 Cal. Gov. Code, § 54957, subd. (b).

30 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).

31 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).

32 *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.

33 Cal. Gov. Code, § 54957, subd. (b)(3).

34 88 Ops.Cal.Atty.Gen. 16 (2005).

35 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.

36 Cal. Gov. Code, § 54957, subd. (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).

37 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.

38 *Moreno v. City of King* (2005) 127 Cal.App.4th 17.

39 Cal. Gov. Code, § 54957.

40 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165.

41 Cal. Gov. Code, § 54957.1, subd. (a)(5).

42 Cal. Gov. Code, § 54957.6.

43 Cal. Gov. Code, § 54957.6, subd. (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).

44 Cal. Gov. Code, § 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).

45 Cal. Gov. Code, § 54957.1, subd. (a)(6).

46 Cal. Gov. Code, § 3549.1.

47 Cal. Gov. Code, § 3540.

48 Cal. Gov. Code, § 3547.

49 Cal. Edu. Code, § 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).

50 Cal. Edu. Code, § 72122.

51 Cal. Edu. Code, § 60617.

52 Cal. Gov. Code, § 54956.96.

53 Cal. Gov. Code, § 54956.7.

54 Cal. Gov. Code, § 54957.

55 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354.

56 Cal. Gov. Code, § 54957.8.

57 Cal. Gov. Code, § 54962.

58 Cal. Health and Saf. Code, § 32106.

59 Cal. Gov. Code, § 54956.75.

60 Cal. Gov. Code, § 54956.81.

61 Cal. Gov. Code, § 54956.86.

62 Cal. Gov. Code, § 54956.87.

63 Cal. Gov. Code, § 54956.95.

64 Ops.Cal.Atty.Gen. 34 (1965)

65 82 Ops.Cal.Atty.Gen. 29 (1999); 2022 WL 1814322, 105 Ops. Cal.Atty.Gen. 89 (2022).

66 Cal. Gov. Code, § 54963.

67 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327. See also Cal. Gov. Code, § 54963.

68 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.

69 80 Ops.Cal.Atty.Gen. 231 (1997).

70 76 Ops.Cal.Atty.Gen. 289 (1993).

71 Cal. Gov. Code, § 54963.

72 Cal. Gov. Code, § 54963.

73 Cal. Gov. Code, § 54957.1.

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Chapter 6

REMEDIES

A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. 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 of action taken

Any interested person, including the district attorney, may seek to invalidate certain actions of a legislative body on the grounds that they violate the Brown Act.[1] The following actions cannot be invalidated:

- 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 the wrong Brown Act section but adequately advises the public that the legislative body 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.[3]
- 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.[4]
- Those connected with the collection of any tax.[5]
- 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.[6]

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 within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.[7] The legislative body then has up to 30 days to cure and correct its action.[8] The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.[9]

Although just about anyone has standing to bring an action for invalidation,[10] the challenger must show prejudice as a result of the alleged violation.[11] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[12]

Declaratory relief to determine whether past action violated the act

Any interested person, including the district attorney, may file a civil action to determine whether a past action of a legislative body constitutes a violation of the Brown Act and is subject to a mandamus, injunction, or declaratory relief action.[13] 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.[14] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[15] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, the interested person has 60 days to file an action.[16]

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.[17] The unconditional commitment must be substantially in the form set forth in the Brown Act.[18] No legal action may thereafter be commenced regarding the past action.[19] 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.[20]

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.[21]

Civil action to prevent future violations

The district attorney or any interested person can file a civil action asking the court to do the following:

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- 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.
- Compel the legislative body to audio-record its closed sessions.[22]

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.

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 when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[23] A court may not compel elected officials to disclose their recollections of what transpired in a closed session.[24]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to audio record its future closed sessions.[25] 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 audio recording if it finds there is good cause to think the Brown Act has been violated and make public a certified transcript of the relevant portion of the closed session recording.[26]

Costs and attorney's fees

A plaintiff 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.[27] 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 Brown 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.[28]

Misdemeanor penalties

A violation of the Brown Act is a misdemeanor if (1) a member of the legislative body attends a meeting where action is taken in violation of the Brown Act, and (2) the member intends to deprive the public of information that the member knows or has reason to know the public is entitled to.[29]

PRACTICE TIP: Attorney's fees will likely be awarded if a violation of the Brown Act is proven.

"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.[30] 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.[31] 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.

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.[32] 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.[33]

Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. 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 and its members. It is in the agency's interest 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.

Overall, 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.

Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

ENDNOTES

1 Cal. Gov. Code, § 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 they 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 Cal. Gov. Code, § 54960.1(d)(2).

4 Cal. Gov. Code, § 54960.1(d)(3).

5 Cal. Gov. Code, § 54960.1(d)(4).

6 Cal. Gov. Code, § 54960.1(d)(5).

7 Cal. Gov. Code, § 54960.1, subds. (b), (c)(1).

8 Cal. Gov. Code, § 54960.1, subd. (c)(2).

9 Cal. Gov. Code, § 54960.1, subd. (c)(4).

10 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1318-1319.

11 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561.

12 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118.

13 Cal. Gov. Code, § 54960.2, subd. (a); Senate Bill No. 1003, Section 4 (2011-2012 Session).

14 Cal. Gov. Code, § 54960.2, subds. (a)(1), (2).

15 The legislative body may provide an unconditional commitment after the 30-day period. If the commitment is made after the 30-day period, however, the plaintiff is entitled to attorneys' fees and costs. Cal. Gov. Code, § 54960.2, subd. (b).

16 Cal. Gov. Code, § 54960.2, subd. (a)(4).

17 Cal. Gov. Code, § 54960.2, subd. (c)(2).

18 Cal. Gov. Code, § 54960.2, subd. (c)(1).

19 Cal. Gov. Code, § 54960.2, subd. (c)(3).

20 Cal. Gov. Code, § 54960.2, subd. (d).

21 Cal. Gov. Code, § 54960.2, subd. (e).

22 Cal. Gov. Code, § 54960, subd. (a).

23 *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 and fn.6.

24 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36.

25 Cal. Gov. Code, § 54960, subd. (b).

26 Cal. Gov. Code, § 54960, subd. (c).

27 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein.

28 Cal. Gov. Code, § 54960.5.

29 Cal. Gov. Code, § 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.

30 Cal. Gov. Code, § 54952.6.

31 61 Ops.Cal.Atty.Gen. 283 (1978).

32 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."

33 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.

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2025

Conflicts of Interest HANDBOOK

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

› Updated including changes effective January 1, 2025

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INTRODUCTION

This Handbook is prepared to provide you with a summary of the major provisions of California's principal conflicts of interest laws and regulations. The text of the laws and regulations referenced in this Handbook can be found on the websites for the California Legislature (http://leginfo.legislature.ca.gov/faces/codes.xhtml) and the Fair Political Practices Commission ("FPPC") (http://www.fppc.ca.gov/the-law.html).

This Handbook is designed to familiarize city officials and staff with California's principal conflicts of interest laws and regulations. Because the laws and regulations change frequently, we recommend that you use this Handbook to become familiar with the basic principles of the conflict laws and regulations, but we also recommend that you contact your city attorney or agency counsel as soon as you think that you may have a potential conflict of interest. We would be glad to help you analyze a potential conflict of interest and/or contact the FPPC for guidance.

We hope you find this Handbook 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 Principal Conflicts of Interest Laws and Regulations

Summary of the Major Provisions and Requirements of Principal Conflicts of Interest Laws and Regulations

I. LAWS AND REGULATIONS AFFECTING DECISION-MAKING

A. The Political Reform Act

In 1974, California voters approved Proposition 9, a statewide initiative titled "the Political Reform Act" (the "Act" or the "PRA"). Gov't Code § 81000 *et seq.*[1] At the time, the measure was the most detailed disclosure law in the nation, and it included new requirements for reporting campaign and lobbying activities. Although the Act was initially written before the Watergate scandal broke, by the time Proposition 9 appeared on the ballot, the drama had unfolded, and nationwide reform proposals were being drafted.

The Act passed by an overwhelming majority, and one of its provisions created a new state agency called the Fair Political Practices Commission ("FPPC"). The FPPC was charged with interpreting and enforcing the Act, and pursuant to this authority, the agency drafted a series of regulations. Since the Act went into effect in 1975, the FPPC has issued new regulations and amendments to existing regulations almost every year.

The Act covers numerous topics germane to ethical behavior in public office—financial data reporting obligations, lobbying restrictions, required campaign disclosures, limitations on campaign financing, proscriptions on mass mailings, restrictions on gifts and honoraria, and most significantly, prohibitions on conflicts of interest in the making of governmental decisions. The Act also contains reporting procedures for financial interests and campaign contributions, as well as disqualification requirements when certain financial interests or campaign contribution standards are satisfied.

Please note that this Handbook is general in nature and may not cover all aspects of an actual conflicts of interest issue. Thus, it is not intended to constitute advice on specific conflicts of interest questions. In the event you have concerns about a possible conflict of interest, you should contact your city attorney or agency counsel for further advice.

[1] All statutory references are to the California Government Code unless otherwise indicated. Regulations of the FPPC are referred to as "Regulation."

1. Disclosure Requirements Under the Political Reform Act

a. Statements of Economic Interests

The Act requires public officials to disclose assets and income that may be materially affected by their official actions by filing a "Statement of Economic Interests" (also known as a "Form 700"). § 87202; Regulation 18722. The requirement applies to council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election all of whom are referred to as "87200 filers.". § 87200. If a public official holds multiple positions subject to reporting requirements, the public official may choose to complete a separate Form 700 for each position or a single "Expanded Statement of Economic Interests." Regulation 18723.1.

Officials must file the Form 700 within 30 days after assuming office, and candidates must file no later than the final filing date of a declaration of candidacy. §§ 87201-02; Regulation 18722-23. An official must file annually thereafter until he or she leaves office, at which point he or she must file a final statement. §§ 87202-04; Regulation 18722. The required disclosures on the Form 700 include:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership) that are located or do business in the jurisdiction;[2]
- Interests in real estate (real property) in the jurisdiction, but not including the official's home address;
- Sources of personal income,[3] including gifts, loans, and travel payments;[4] and
- Positions of management or employment with business entities that do business in the jurisdiction.

§ 87203; 87209. If the official no longer holds certain investments and real property interests at the time of filing, but held them during the 12 months prior to filing, he or she must still disclose those interests on the Form 700. *Id.* The Form 700 is a public document open to inspection and duplication.

[2] The term "Investment" is defined to exclude cryptocurrency holdings, and diversified mutual funds, exchange traded funds, or closed-end funds that pool money from more than 100 investors and hold securities of more than 15 issuers and which does not have a stated policy of concentrating holdings in the same industry or business. Regulation 18237.

[3] In some instances, an official may need to disclose the sources of income to a business entity in which the official has an ownership interest if the official owns at least 10 percent of a business. In that case, the official would be required to disclose a source of income to the business as a source of income to the official if the official's pro rata share of gross receipts from that source exceeds $10,000 in aggregate during the reporting period. § 87207(b). In those cases, the official must report the name, address, and a general description of the business activity of the business entity, as well as the name of the source of income that aggregates to $10,000 or more. *Id.*

[4] If an official receives a gift that is a travel payment, advance, or reimbursement valued at $50 or more, the official must also disclose the travel destination. § 87207(a)(4).

For public officials not covered by the requirements of Section 87203, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. These locally designated positions are referred to as "designated positions" and as "code filers." Each state and local agency must adopt a conflicts of interest code tailoring the disclosure requirements for each designated position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by his or her agency would not be required to disclose real estate interests, but would be required to disclose investments in and income from individuals and entities that supply equipment, materials, or services to the agency. §§ 87300-02.

Effective January 1, 2025, 87200 filers such as city councilmembers, mayors, city treasurers, city attorneys, and candidates for those positions as well as city planning commissioners are to file their Form 700s electronically with the FPPC through the FPPC's portal. § 87500 (a)(2)(H) and (I). The FPPC is required to redact the signature, telephone number, email address and mailing address of the filer, and at the request of the filer and if the personal residence is also a business address or the address of a tenant, the street name and building number of the filer's personal residence. § 87500.3. Persons holding a designated position will continue to file their Form 700s with their local city clerk or agency secretary.

A city that maintains an internet website must post a list of the elected officers who file a Form 700 with that city. A statement must also be posted on the website indicating that these Form 700s may be obtained by visiting the FPPC office or the city clerk's office. The statement must include the physical address for both the FPPC and the city clerk's office. Finally, a link to the FPPC website must be posted with a statement that indicates that Form 700 "for some state and local government agency elected officers may be available in electronic format" on the FPPC's internet website. § 87505.

A local agency may establish a system for the electronic filing of Form 700s for persons holding designated positions in a local conflict of interest code, in accordance with State law. § 87500.2; Regulation 18756. Public officials holding designated positions should seek guidance from the local filing officer as to the appropriate procedure and format for filing a Form 700.

b. Behested Payments

There are also disclosure requirements for certain fundraising activities that elected officials perform for others, including in their capacity as employees or board members of nonprofit organizations. Elected officials who successfully solicit one or more contributions for "legislative, governmental, or charitable purposes" that equal or exceed $5,000 in the aggregate from the same source during a single calendar year must file a report with the official's agency (typically the city clerk) within 30 days of reaching the $5,000 threshold. § 84224(a).

The report must contain the following information:

- The contributor's name and address;
- The amount of the contribution;
- The date or dates on which the payments were made;
- The name and address of the contribution recipient;
- If goods or services were contributed, a description of those goods and services; and
- A description of the purpose or event for which the contribution was made.

The report must also include the following information to the extent known to the elected official:

- A brief description[5] of the relationship between the nonprofit organization and the elected official, their family member, member of their campaign, or member of their staff; and
- A brief description of any proceedings before the elected official's agency at the time of the payment or 12 months before the payment, in which the nonprofit organization is a named party or subject of the decision.

Regulation 18424. The statute does not define the term "legislative, governmental, or charitable purposes," but charitable purposes typically involve 501(c)(3) organizations. Examples of "governmental" purposes include fundraising for a new city hall roof, an inaugural celebration committee,[6] litigation expenses,[7] a breakfast honoring public safety personnel,[8] and youth conferences.[9] The term "legislative purpose," in turn, refers to a 1996 FPPC opinion in which a state senator asked a private party to pay for a witness's airfare and expenses to testify at a legislative hearing.[10]

These reporting requirements also apply if the payment is "made at the behest of" the elected officer, even if the officer did not actively solicit contributions. §§ 82004.5, 82041.3. A payment is "made at the behest of" an elected officer when it is made "under the control or at the direction of, in cooperation, consultation, coordination, or

[5] A "brief description" includes any decision making capacity within the organization, salaried employment, status as a founding member, and honorary or advisory board positions. Regulation 18424(a).
[6] *Sutton* Advice Letter, No. A-05-256, 2005 WL 3693740 (2005).
[7] *Stoen* Advice Letter, No. A-03-185, 2004 WL 334564 (2004) (district attorney's expenses in suing a private company when governing body withdrew funding for effort).
[8] *Gallegos* Advice Letter, No. A-00-059, 2000 WL 311529 (2000).
[9] *Gallegos* Advice Letter, No. A-98-192, 1998 WL 671296 (1998).
[10] *Schmidt* Advice Letter, No. A-96-098, 1996 WL 779579 (1996).

concert with, at the request or suggestion of, or with the express, prior consent of" that officer. *Id*.

This disclosure requirement does not apply to a behested payment made by a local, state, or federal governmental agency for a principally legislative or governmental purpose. § 84224(b)(4).

2. Conflicts of Interest Under the Political Reform Act

In addition to the disclosure requirements, the Act requires public officials to disqualify themselves from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. § 87100; Regulation 18700. An official has a disqualifying financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, directly on the official or a member of the official's immediate family, or on certain listed financial interests. *Id*. The listed financial interests are:

- Any business entity in which the public official has a direct or indirect investment worth $2,000 or more.
- Any real property in which the public official has a direct or indirect interest worth $2,000 or more.
- Any source of income, including commission income or incentive income, aggregating to at least $500 within 12 months prior to the time when the decision is made. The $500 must be provided or promised to, or received by, the official during the 12 months before the decision.
- Any business entity (excluding nonprofit corporations) in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating $630 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

§ 87103; Regulations 18700 and 18940.2. The FPPC regulations interpret and provide guidance for most of the terms used in the Act. The FPPC also provides standards for determining if each element of the Act's prohibitions has been satisfied.

3. The FPPC's Test for Analyzing Conflicts of Interest

The FPPC advises a public official to follow a four-part test to analyze a potential conflict of interest that is set forth in Regulation 18700(d).

The FPPC's four-part test assumes that an official already has determined whether he or she is a public official within the meaning of the Act. The test also assumes that the

official has identified the financial interests that may be affected by a particular governmental decision. Since these two steps are necessary for a complete analysis, we recommend that public officials follow the seven steps described below, which incorporate these two initial steps as well as the FPPC's four-part test.

STEP ONE: IS A PUBLIC OFFICIAL INVOLVED?

Determine whether the individual is a public official within the meaning of the Act.

The Act applies only to "public officials." Regulation 18700(b). A "public official" is defined to include a "member, officer, employee, or consultant" of a state or local government agency. § 82048; Regulation 18700(c). The regulations define "member" and "consultant" as follows:

- A "member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decision-making authority. A board or commission possesses decision-making authority if: (i) it may make a final governmental decision, (ii) it may compel or prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden, or (iii) it makes substantive recommendations, which, over an extended period of time, have been regularly approved without significant amendment or modification by another official or agency. Regulation 18700(c)(2).

- A "consultant"[11] includes an individual who, pursuant to a contract with a state or local government agency, makes specific kinds of governmental decisions or serves in a staff capacity with the agency and either participates in governmental decisions or performs the same or substantially all of the same duties that would otherwise be performed by a person in a position listed in the agency's conflict of interest code. Regulation 18700.3.

STEP TWO: WHAT ARE THE PUBLIC OFFICIAL'S FINANCIAL INTERESTS?

Identify the public official's financial interests.

A public official's financial interests include certain business entities, real property, sources of income, and donors of gifts (as well as intermediaries and agents of such donors). Regulation 18700(c)(6). More specifically, a public official has a financial interest in any of the following:

[11] For more on who constitutes a "consultant" subject to the Act, see, e.g., *Ennis* Advice Letter, FPPC No. A-15-006, 2015 WL 1781144 (2015).

- A business entity in which the official has a direct or indirect investment worth at least $2,000.[12] (Note: In certain situations, this can include a parent,[13] subsidiary,[14] or otherwise related[15] business entity.[16])

- Any real property in which the public official has a direct or indirect interest worth at least $2,000.[17] Real property interests include all leases except month-to-month leases and leases with terms shorter than a month. Regulation 18233.

- Any "source of income" of at least $500 that is provided or promised to the public official, and received by the public official within 12 months prior to a governmental decision, not including gifts and loans by banks available to the general public. Income is "promised to" the official if he or she has a "legally enforceable right to the promised income." Regulation 18700(c)(6)(C). The term "source of income" may include individuals, organizations, and businesses. If the "source of income" is a business that provides or promises the official at least $500 within 12 months prior to a governmental decision, the official also has a source-of-income interest in: (1) any individual owning at least a 50 percent interest in that business, and (2) any individual who has the power to direct or cause the direction of management and policies of the business. Regulation 18700.1(a)(2).

- Any business entity in which the public official is a director, officer, partner, trustee, or employee, or holds any position of management. (Note: Again, this may include a parent, subsidiary, or otherwise related business entity.)

- Any donor of gifts, or any intermediary or agent for a donor of gifts, amounting to at least $630 where that amount is provided to, received by, or promised to the official in the 12 months prior to a governmental decision. Regulation 18700(c)(6)(E), 18940.2.

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[12] The FPPC has determined that membership in a country club is a financial interest in the club as a business entity when the membership is transferrable and can be resold for profit or loss. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

[13] A business entity is a "parent" if it is a corporation that controls more than 50 percent of the voting stock of another corporation; the parent corporation is also a parent to any subsidiaries of the corporation that it controls. Regulation 18700.2 (b)(1).

[14] A business entity is a "subsidiary" if it is a corporation whose voting stock is more than 50 percent controlled by another corporation; the subsidiary corporation is also a subsidiary to any corporation that controls its parent corporation. Regulation 18700.2 (b)(2).

[15] Business entities, other than a parent corporation, are "otherwise related" if (1) the same person or persons together direct or control each business entity, or (2) the same person or persons together have a 50 percent or greater ownership interest in each business entity. Regulation 18700.2 (b)(3).

[16] An official with a financial interest in a business entity also has an interest in a parent or subsidiary of the business entity or an otherwise related business entity, unless (1) the official's only interest is that of a shareholder and the official is a passive shareholder with less than 5 percent of the shares of the corporation, and (2) the parent corporation is required to file annual Form 10-K or 20-F Reports with the Securities and Exchange Commission and has not identified the subsidiary on those forms or its annual report. Regulation 18700.2 (c)-(d).

[17] The FPPC has determined that membership in a country club is a financial interest in real property when the member would be entitled to a proportionate share of the value of the club's assets if the club were dissolved. *Gee* Advice Letter, FPPC No. A-17-249, 2018 WL 723401 (2018).

- The personal finances of the public official and immediate family.[18] This is a sort of "catch-all" provision that is meant to address economic interests of a public official and his or her immediate family that do not qualify as investments, property, or business entities, but are nonetheless potentially affected by government decisions.

§§ 82047, 87103; Regulations 18700, 18940.2. The terms "indirect investment" and "indirect interest" are used to indicate investments and interests owned by the spouse or dependent child of the public official, an agent of the public official, or a business entity or trust in which the official, or his or her agent(s), spouse, or dependent children, has at least a 10 percent ownership interest. Regulation 18700(c)(6)(F).

STEP THREE: IS IT REASONABLY FORESEEABLE THAT THE GOVERNMENTAL DECISION WILL HAVE A FINANCIAL EFFECT ON ANY OF THE OFFICIAL'S FINANCIAL INTERESTS?

Determine whether the governmental decision will have a reasonably foreseeable financial effect on any of the public official's financial interests.

Regulation 18701 draws a distinction between a financial interest that is "explicitly involved" in a decision, on the one hand, and a financial interest that is not "explicitly involved" in a decision, on the other hand.

Financial interests are considered to be explicitly involved in a decision if the interest is a "named party in, or the subject of, a governmental decision before the official or the official's agency." Regulation 18701(a). A financial interest is the "subject" of a proceeding "if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1) – (6)." Regulation 18701(a). In those cases, the financial effect is presumed to be reasonably foreseeable.

Even if a financial interest is not explicitly involved in a decision, the effect may still be considered reasonably foreseeable. Regulation 18701 states that a financial effect need not be "likely" to be considered "reasonably foreseeable" for purposes of the FPPC's regulations. If the financial effect can be "recognized as a realistic possibility" and if the effect is "more than hypothetical or theoretical," it will be considered reasonably foreseeable. Regulation 18701(b). The financial effect will not be

[18] The FPPC determined that a public official had a financial interest in his personal finances when considering a decision to award a contract for waste hauling services at a facility located near his mobile home. *Brady* Advice Letter, FPPC No. A-22-027, 2022 WL 16725545 (2022).

considered reasonably foreseeable if the "the financial result cannot be expected absent extraordinary circumstances" that are not subject to the official's control.

The FPPC also provides the following list of non-exclusive factors that should be considered when determining whether a governmental decision will have a reasonably foreseeable effect on a financial interest that is not explicitly involved in the decision:

- The extent to which the occurrence of the financial effect is contingent upon intervening events, not including future governmental decisions by the official's agency, or any other agency appointed by or subject to the budgetary control of the official's agency.

- Whether the public official should anticipate a financial effect on his or her financial interest as a potential outcome under normal circumstances when using appropriate due diligence and care.

- Whether the public official has a financial interest that is of the type that would typically be affected by the terms of the governmental decision or whether the governmental decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the public official has a financial interest.

- Whether a reasonable inference can be made that the financial effects of the governmental decision on the public official's financial interest might compromise a public official's ability to act in a manner consistent with his or her duty to act in the best interests of the public.

- Whether the governmental decision will provide or deny an opportunity, or create an advantage or disadvantage for one of the official's financial interests, including whether the financial interest may be entitled to compete or be eligible for a benefit resulting from the decision.

- Whether the public official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the governmental decision on his or her financial interest in formulating a position.

Regulation 18701(b). Possession of a real estate, brokerage license, or other professional license does not automatically constitute a reasonably foreseeable effect on the official's financial interest. Regulation 18701.1. The official's likely business activity must be considered to determine whether the governmental decision will have a reasonably foreseeable effect on one of the official's financial interests.

If it is not reasonably foreseeable that the governmental decision will have a financial effect on any of the official's financial interests, there is no conflict under the Act. If it is determined that it is reasonably foreseeable that the governmental decision will have a financial effect, however, the official must determine whether the effect is material.

STEP FOUR: WILL THE REASONABLY FORESEEABLE EFFECT BE MATERIAL?

Determine whether the reasonably foreseeable financial effect will be material.

If the effect is "nominal, inconsequential, or insignificant," the financial effect will not be considered material. Regulation 18702(b). Otherwise, the provisions in Regulations 18702.1 through 18702.5 determine for each type of financial interest whether the effect is material. Regulation 18702(a).

a. Business Entities

Regulation 18702.1 provides that the reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is material whenever the business entity is a named party in, or the subject of, the decision, including any decision in which the entity:

- Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the entity with the official's agency;
- Offers to sell a product or service to the official's agency;
- Bids on or enters into a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency;
- Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of $1,000 or more in any 12-month period;
- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency;
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency; or
- Is otherwise subject to an action taken by the official's agency that is directed at the entity.

The reasonably foreseeable effect of a decision on a business entity in which the official has an investment interest or holds an employment or management position is also material if any of the following criteria are met:

- The decision may result in an increase or decrease of the entity's annual gross revenues, or the value of the entity's assets or liabilities, in an amount equal to or more than:

- ✓ $1,000,000; or
- ✓ Five percent of the entity's annual gross revenues and the increase or decrease is at least $10,000.

- The decision may cause the entity to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than:
  - ✓ $250,000; or
  - ✓ One percent of the entity's annual gross revenues and the change in expenses is at least $2,500.

- The official knows, or has reason to know, that the entity has an interest in real property and:
  - ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or
  - ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

Regulation 18701(a). There is also a "small shareholder" exception that allows officials to participate in decisions explicitly involving a business entity where the official's only interest in that business entity is an investment interest worth no more than $25,000. Regulation 18702.1(b). To qualify for this exception, the interest also must be less than one percent of the business entity's shares. However, meeting these thresholds does not automatically allow the official to participate in the decision. The official still must analyze the decision's potential effect on the business entity's annual gross revenues, assets and liabilities, expenses, and real property interests. Under this rule, even where an official has only a small investment in a business entity, the impact of a decision might be so significant that the official still has a conflict of interest.

b. Real Property – Modified "500-Foot Rule" and Other Criteria

The traditional "500-foot" rule has been replaced with an extensive list of criteria that must be analyzed to determine whether a decision will have a material financial effect on an official's real property interest. Regulation 18702.2. There are now eight materiality standards that must be evaluated when an official has an ownership interest in real property, and four materiality standards that must be evaluated when an official has a leasehold interest in real property (i.e., as the lessee of the property).

Regulation 18702.2 now provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest, other than a leasehold interest, is material whenever the governmental decision:

- Involves the adoption of, or amendment to, a development plan or criteria applying to the parcel;

- Determines the parcel's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in, or exclusion from, any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries;

- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the parcel;

- Authorizes the sale, purchase, or lease of the parcel;

- Involves the issuance, denial or revocation of a license, permit, or other land use entitlement authorizing a specific use of or improvement to the parcel or any variance that changes the permitted use of, or restrictions placed on, that real property;

- Involves construction of, or improvements to, streets, water, sewer, storm drainage, or similar facilities, and the parcel will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services;

- Involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property[19]; or

- Involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel,[20] and the decision would change the parcel's:

  - ✓ Development potential;

  - ✓ Income producing potential;

  - ✓ Highest and best use;

  - ✓ Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or

  - ✓ Market value.

[19] See, the *Coates Advice Letter,* FPPC No. A-15-217, 2015 WL 8006082 (2015) (councilmember lived within 500 feet of property subject to hearing on a view preservation tree trimming nuisance abatement order did not have a conflict of interest in the decision), the *Garibaldi Advice Letter,* FPPC No. A-22-107, 2022 WL 16725588 (2022) (two council members were not disqualified from taking part in decisions concerning a multi-purpose path located 190 and 360 feet (as the crow flies) of their respective residences), and the *Miranda Advice Letter,* FPPC No. A-23-083, 2023 WL 4566888 (2023) (city manager who lived within 500 feet of a city project to install flagpoles, additional lights, and updates to landscaping at a veterans memorial did not have a conflict of interest).

[20] When a construction project "affects only a clearly defined, specific and isolated site" of a larger parcel of land located near an official's real property, the distance between the official's property and the property subject to the decision can be measured from the site of the construction site itself, rather than from the property line of the parcel on which the construction site is located. *Anderson* Advice Letter, FPPC No. A-23-129, 2023 WL 8528614.

Regulation 18702.2(b) clarifies that the financial effect of a governmental decision on a parcel of real property in which an official has an ownership interest is presumed not to be material whenever the governmental decision involves property located 1,000 feet or more from the property line of the official's property. This presumption may be rebutted, however, with clear and convincing evidence that the governmental decision would have a substantial effect on the official's property.

The FPPC has relaxed the rules with respect to real property economic interests that stem from having an ownership interest in the common area of a common interest development. Previously, in addition to evaluating whether the decision concerned a project located within 500 feet of the public official's real property, it was necessary to evaluate whether the decision was within 500 feet of any homeowner association common area in which the official had an ownership interest. Now, Regulation 18702.2 excludes common areas in common interest developments from the definition of "real property" for the purpose of conducting a conflict of interest analysis. Thus, the proximity of homeowner association common areas to a project is no longer a factor in the conflict of interest analysis.

With respect to an official's leasehold interests, i.e., where the official is the lessee of the property, Regulation 18702.2(c) provides that the reasonably foreseeable financial effect of a governmental decision on an official's real property economic interest is material only if the governmental decision will:

- Change the termination date of the lease;
- Increase or decrease the potential rental value of the property;
- Change the official's actual or legally allowable use of the property; or
- Impact the official's use and enjoyment of the property.

There are a few exceptions in Regulation 18702.2(d) by which the effect of a decision on an official's real property interest will not be considered material. The following decisions will not be considered to have a material effect on an official's real property interest:

- The decision solely concerns repairs, replacement or maintenance of existing streets, water, sewer, storm drainage, or similar facilities.
- The decision solely concerns the adoption or amendment of a general plan and all of the following apply:
  - ✓ The decision only identifies planning objectives or is otherwise exclusively one of policy. A decision will not qualify under this subdivision if the decision is initiated by the public official, by a person that is a financial interest to the public official, or by a person representing either the public official or a financial interest to the public official.

- ✓ The decision requires a further decision or decisions by the public official's agency before implementing the planning or policy objectives, such as permitting, licensing, rezoning, or the approval of or change to a zoning variance, land use ordinance, or specific plan or its equivalent.

- ✓ The decision does not concern an identifiable parcel or parcels or development project. A decision does not "concern an identifiable parcel or parcels" solely because, in the proceeding before the agency in which the decision is made, the parcel or parcels are merely included in an area depicted on a map or diagram offered in connection with the decision, provided that the map or diagram depicts all parcels located within the agency's jurisdiction and the economic interests of the official are not singled out.

- ✓ The decision does not concern the agency's prior, concurrent, or subsequent approval of, or change to, a permit, license, zoning designation, zoning variance, land use ordinance, or specific plan or its equivalent.

These rules replace the old "500-foot rule" that applied before 2014. Of special interest to many local public officials, these provisions appear to allow public officials to participate in most decisions relating to slurry sealing, asphalt paving, curb and sidewalk repairs, or tree replacement, even if the work occurs within 500 feet of their property, due to the exception for repairs and replacement of existing infrastructure.

c. Sources of Income

The FPPC regulations also provide materiality standards for sources of income. Regulation 18702.3. A "source of income," as discussed above, is any person from whom a public official has received at least $500 in the twelve months prior to the relevant governmental decision. Regulation 18700.1. A "person" includes individuals, organizations, and business entities. § 82047.

The regulations provide that any reasonably foreseeable financial effect on an individual, organization, or business entity[21] that is a source of income to an official or an official's spouse is material if:

- The source is a named party in, or the subject of, the decision including a claimant, applicant, respondent, or contracting party; or

- The decision will achieve, defeat, aid, or hinder a purpose or goal of the source and the official, or the official's spouse, receives or is promised the

[21] The materiality standards for sources of income provided in this section do not apply where a government entity qualifies as a source of income, including where a public official is paid by the entity as a consultant or contractor. Regulation 18702.3(d). An official with an interest in a governmental entity is disqualified from taking part in a decision only if there is a unique effect on that official. *Id.*

income for achieving the purpose or goal. This is known as the "Nexus" test.

Regulation 18702.3(a)(1), 18702.3(b). In addition to these general standards, the regulations provide further guidance that separately analyzes a source of income depending on whether the source is an individual, non-profit organization, or business entity. If the source is an ***individual***, a reasonably foreseeable financial effect on the source is material if:

- The decision may affect the individual's income, investments, or other assets or liabilities (other than an interest in a business entity or real property) by $1,000 or more;

- The official knows, or has reason to know, that the individual has an interest in a business entity that will be financially affected under the materiality standards in Regulation 18702.1; or

- The official knows, or has reason to know, that the individual has an interest in real property, and either:

  ✓ The property is a named party in, or the subject of, the decision as defined in Regulations 18701(a) and 18702.2(a)(1) - (6); or

  ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***nonprofit organization***, a reasonably foreseeable financial effect on the source is material if:

- The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than (1) $1,000,000, or (2) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than $10,000;

- The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than (1) $250,000, or (2) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than $2,500; or

- The official knows, or has reason to, know that the organization has an interest in real property and either:

  ✓ The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) - (6); or

  ✓ There is clear and convincing evidence the decision would have a substantial effect on the property.

If the source is a ***business entity***, a reasonably foreseeable financial effect on the source is material if that business entity will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see ***Business Entities*** above). Regulation 18702.3(a). The regulation also includes additional provisions to help officials who receive income from retail sales of a business entity in determining when a retail customer becomes a source of income to the public official directly. § 87103.5. This regulatory provision, which is intended to replace prior Regulation 18707.5, provides that:

- The retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public, and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction; and

- Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the general clientele of the business. An official is unable to recognize a significant monetary difference when: (1) the business is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or (2) the business has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer.

Regulation 18702.3(c). If you own 10 percent or more of a business entity that is engaged in the retail sale of goods or services, we recommend that you review this provision in order to determine whether individual retail customers will be considered sources of income to you for the purpose of analyzing conflicts under the Act.

d. Sources of Gifts

The FPPC regulations also provide materiality standards for sources of gifts. Regulation 18702.4. For the purpose of analyzing potential conflicts under the Political Reform Act, a donor becomes a "source of gifts" by providing or promising a public official with gifts valued at $630 or more in the aggregate in the 12 months prior to a governmental decision. Regulations 18700(c)(6)(E), 18940.2. A person may also be a source of a gift by being an "intermediary or agent for a donor of" a similar gift. Regulation 18700(c)(6)(E).

Under the FPPC regulations, a financial effect on a source of a gift is material if:

- The source is a claimant, applicant, respondent, contracting party, or otherwise named or identified as the subject of the proceeding;

- The source is an individual that will be financially affected under the standards applied to an official in Regulation 18702.5 (see ***Personal***

Finances below), or the official knows, or has reason to know, that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.1 or 18702.2, respectively;

- The source is a nonprofit organization that will be financially affected under the materiality standards applied to a nonprofit source of income interest in Regulation 18702.3 (see ***Sources of Income*** above); or

- The source is a business entity that will be financially affected under the standards as applied to a financial interest in Regulation 18702.1 (see ***Business Entities*** above).

Regulation 18702.4. Like with sources of income, the analysis of materiality for sources of gifts may depend on whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is the "claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding," the financial effect will be deemed material, regardless of whether the source is an individual, a nonprofit, or a business entity. If the source of a gift is not the "claimant, applicant, respondent, contracting party, or … otherwise named or identified as the subject of the proceeding," the official will need to apply the other standards in Regulation 18702.4(b) – (d), depending on whether the source of the gift is an individual, a nonprofit, or a business entity.

e. Personal Finances

Finally, the regulations provide materiality standards for effects on personal finances. Regulation 18702.5. A reasonably foreseeable financial effect on an official's or his or her immediate family's personal finances is considered material if the decision may result in the official or the official's immediate family member receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision. Regulation 18702.5(a).

However, a financial effect is ***not*** considered material under Government Code Section 87103 if the decision would do any of the following:

- Affect only the salary, per diem, or reimbursement for expenses the public official, or a member of his or her immediate family receives from a federal, state, or local government agency unless the decision is to appoint (other than an appointing decision otherwise permitted under Regulation 18702.5), hire, fire, promote, demote, suspend without pay, or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the public official's immediate family member is the only person in the job classification or position.

- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meetings of the group or body aggregating $500 or more in any 12-month period, the effect on the official's personal finances is material unless the appointing body posts specified information on its website.[22]

- Appoint the official to be an officer of the governing body of which the official is already a member, such as a decision to appoint a city councilmember to be the city's mayor.

- Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group.

- Result in the payment of any travel expenses incurred by the official or the official's immediate family member while attending a meeting as an authorized representative of an agency.

- Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty.

- Result in the official's receipt of any personal reward from the official's use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public.

Regulation 18702.5(b). Any effect on the interests noted above would not constitute a material effect on personal finances for the purpose of the Political Reform Act.

Regulation 18702.5 clarifies that if a decision only affects a business entity or real property in which the official has a financial interest, the regulation regarding personal finances does not apply. Regulation 18702.5(c). Under those circumstances, the official should analyze the applicable materiality standards for those types of interests in Regulations 18702.1 and 18702.2 to determine whether a conflict exists.

[22] Specifically, the appointing body must post all of the following information on its website: (1) a list of each appointed position and its term; (2) the amount of the stipend for each appointed position; (3) the name of the official who has been appointed to the position; and (4) the name of any official who has been appointed to be an alternate for the position. Regulation 18702.5(b)(2).

STEP FIVE: DOES THE "PUBLIC GENERALLY" EXCEPTION APPLY?

Determine if the official can demonstrate that the material financial effect on the official's interest is indistinguishable from the decision's effect on the public generally.

Once it is determined that it is reasonably foreseeable that a decision will have a material financial effect on an official's financial interest, it is necessary to evaluate whether an exception to the disqualification requirement is applicable. One exception, known as the "public generally" exception, provides that even if a governmental decision will have a reasonably foreseeable material financial effect on the official's financial interest, disqualification will not be required if the effect on the public official's financial interest is indistinguishable from the decision's effect on the financial interests of the public generally. Regulation 18703.

In order to use this exception, the official must be able to demonstrate two core elements. First, the governmental decision must affect a "significant segment" of the public in the jurisdiction of the public agency. Second, the governmental decision's effect on the official's financial interest must not be unique as compared to the effect on the significant segment. Regulation 18703(a).

The FPPC has simplified the regulation to determine what constitutes a sufficiently "significant segment" of the public. Regulation 18703(b). A significant segment of the public is:

- At least 25 percent of any of the following:
  - ✓ All businesses or nonprofit entities within the official's jurisdiction;
  - ✓ All real property, commercial real property, or residential real property within the official's jurisdiction; or
  - ✓ All individuals within the official's jurisdiction.
- At least 15 percent of residential real property within the official's jurisdiction, if the official's only interest in a government decision is the official's primary residence.

Regulation 18703(b).

To determine whether a decision's effect on the official's financial interest is "unique" as compared to the effect on the significant segment of the public, the FPPC requires that an official determine whether the decision has a "disproportionate" effect on:

- The development potential or use of the official's real property or on the income producing potential of the official's real property or business entity.

- An official's business entity or real property resulting from the proximity of a project that is the subject of a decision.

- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests[23] in similar entities or properties that is substantially greater than the effect on a single interest.

- An official's interest in a business entity or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage.

- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official.

- An official's personal finances or those of his or her immediate family.

Regulation 18703(c).

The official's "jurisdiction" for the purposes of this regulation constitutes the "jurisdiction of the state or local government agency as defined in Section 82035, or the designated geographical area the official was elected to represent, or the area to which the official's authority and duties are limited if not elected." Regulation 18703(d). Real property is considered to be within a "jurisdiction" if the "property or any part of it is located within, or not more than, two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the local government agency." § 82035.

The FPPC Regulations include a number of specialized "public generally" exceptions. Regulation 18703(e). The financial effect on an official's financial interest is deemed indistinguishable from that of the public generally where there is no unique effect on the official's interest if the official establishes:

- The decision sets or adjusts the amounts of assessments, taxes, fees, or rates for water, utility, or other broadly provided public services or facilities that are applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, the exception does not apply if the decision imposes assessments, taxes, or fees, determines the boundaries of a property, or determines who is subject to the assessments, taxes, or fees. Under this exception, these factors must have already been determined.

[23] Ownership of only two residential properties apparently would not constitute "multiple interests ... in properties that is substantially greater than the effect on a single interest." *Peake* Advice Letter, FPPC No. A-15-227, 2015 WL 9680333 (2015).

- The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction.

- The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at the specific location.

- The decision is limited to establishing, eliminating, amending, or otherwise affecting the rights or liabilities of tenants and owners of residential real property, including rent control or tenant protection matters. Officials may participate if: (1) the decision is applicable to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act; (2) the official owns three or fewer residential units; and (3) the only interests affected by the decision are the official's interest in residential real property as a landlord or the official's interest in a primary residence as owner or lessee.

- The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented.

- The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency.

- The decision affects a federal, state, or local governmental entity in which the official has an interest.

- The decision is made by a governmental entity that primarily manages an airport or harbor and (1) the decision affects permits, licenses, or other use entitlements granted by the entity that are broadly available to all others similarly situated and on substantially the same terms in a similar manner and (2) the official's interests affected by the decision relate to the official's permit, license, or other use entitlement from the government entity.

Regulation 18703(e).

STEP SIX: MAY THE OFFICIAL MAKE OR PARTICIPATE IN MAKING A DECISION?

Determine whether the public official will be making, participating in the making, or using or attempting to use his/her official position to influence a governmental decision.

The Act applies when a public official is "making, participating in making, or using or attempting to use official position to influence a government decision." Regulation 18704. If the official will be called upon to make, participate in making, or use his or her official position to influence a governmental decision in which the official has a financial interest, the official will have a prohibited conflict of interest. The FPPC regulations define each of these actions for purposes of applying the Act:

- A public official "makes" a governmental decision when the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. Regulation 18704(a).[24]

- A public official "participates in" a governmental decision when the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. Regulation 18704(b).

- A public official "uses an official position to influence" a decision if the official: (i) contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (ii) contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Regulation 18704(c).

There are limited exceptions to this rule. A public official is not making, participating in making, or influencing a government decision when the official acts in a solely ministerial, secretarial, or clerical manner. Regulation 18704(d)(1).

In addition, an official is not making, participating in making, or influencing a government decision when the official appears before the public agency as a member of the general public to represent specific and limited "personal interests" or when the

[24] A public official's "determination not to act" does not constitute participating in "making" a governmental decision when the public official is abstaining from a decision due to a personal financial interest.

official negotiates his or her compensation or terms of employment. Regulation 18704(d). With respect to negotiating the terms of employment, however, "an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or the official's immediate family, or set a salary for the official or the official's immediate family different from salaries paid to other employees of the government agency in the same job classification or position." Regulation 18704(d)(3).

Making, participating in, or influencing a governmental decision also does not include communications to either the press or the general public. Regulation 18704(d)(4). Nor does it include academic decisions. Regulation 18704(d)(5). Limited actions in an official's professional capacity as an architect or engineer also are not considered to be making, participating in, or influencing a governmental decision. Regulation 18705(d)(6). Finally, an official who serves as a consultant will not be participating in a decision by making a recommendation regarding additional services if the agency has already contracted with the consultant – for an agreed upon price – to make recommendations concerning services of the type offered by the consultant. Regulation 18704(d)(7).

STEP SEVEN: IS THE PUBLIC OFFICIAL'S PARTICIPATION LEGALLY REQUIRED?

Determine if the public official's participation is legally required despite a conflict of interest.

A public official also is permitted to participate in making a governmental decision, despite having a conflict of interest in the decision, if no alternative source of decision exists that would be consistent with the purposes and terms of the statute authorizing the decision. Regulation 18700(e), 18705(a).

This exception is applied when a quorum of a legislative body cannot be convened due to the disqualifying conflicts of interests of its members. In that situation, as many members as are needed to create the minimum number for the quorum may be selected at random to participate. Regulation 18705(c)(3). In these situations, stringent disclosure requirements apply, not only regarding the basis of the selected member's conflict of interest, but also the reason why there is no alternative source of decision-making authority. Regulation 18705(b). For the purposes of this section, a "quorum" means "the minimum number of members required to conduct business and when the vote of a supermajority is required to adopt an item, the "quorum" shall be that minimum number of members needed for that adoption." Regulation 18705(d).

Note that this rule is construed narrowly and may not be invoked to permit an official who is otherwise disqualified to vote to break a tie or to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not such other members are actually present at the time of the decision. Regulation 18705(c).

Prior to invoking this Rule, local agencies should consider whether the decision can be broken into components, and then through the use of another tool called "segmentation," have the local agency body consider and act on each component separately. Through that process, a member with a conflict in one component can be disqualified from that particular component but then still allowed to participate in the decisions on the other components of the decision. The criteria and standards for use of "segmentation" are contained in Regulation 18706 and further explained in a series of advice letters issued by the FPPC.[25]

4. Abstention

When a public official has a conflict of interest under the Act, he or she is required to abstain from making, participating in making, or using or attempting to use his or her official position to influence the local agency's decision. Abstention avoids a violation of the conflict of interest provisions of the Act.

The Act establishes specific procedures that most public officials must follow when they have a conflict of interest and are required to abstain from a decision. § 87105; Regulation 18707. Immediately prior to the consideration of the matter, the official must: (i) identify each financial interest that gives rise to the conflict in detail sufficient to be understood by the public (except that disclosure of the exact street address of a residence is not required); (ii) publicly state his or her recusal from the matter; and (iii) leave the room until after the disposition of the matter unless the matter appears on a consent calendar, or other similar portion of an agenda for uncontested matters, or the official is speaking as a member of the public regarding an applicable personal interest. § 87105; Regulations 18707, 18704(d)(2). The FPPC has clarified the procedure required and precise information that must be disclosed, as described in Regulation 18707. This includes additional information regarding rules for closed sessions and matters on the consent calendar. Public officials may not avoid disclosure through partial absences and must disclose financial interests either immediately prior to consideration of an item or if the official arrives after consideration, immediately after the official joins the meeting. Regulation 18707(a).

The procedure stated in Regulation 18707(a) must be followed by all council members, judges, elected state officers, members of planning commissions, members of boards of supervisors, district attorneys, county counsels, city managers, city attorneys, city treasurers and other public officials who manage public investments, and to candidates for any of these offices at any election. §§ 87105, 87200. The Act does not require other public officials who must file financial disclosure forms under local conflict of interest codes to follow the same procedure, but the FPPC has now prescribed specific rules for those public officials. Regulation 18707(b).

Depending on the nature of his or her interest, a public official who must abstain from a decision may comment on the item as a member of the public during the public comment period on a matter related to his or her "personal interests." The term

[25] See "Segmentation, Participation, and Complications: A Guide for Segmenting Decisions in Compliance with the Political Reform Act and its Implementing Regulations," League of California Cities 2024 City Attorney's Spring Conference.

"personal interest" is defined to include an interest in real property or a business entity that is wholly owned by the official or his or her immediate family. Regulations 18704(d)(2)(A) and (B). It also includes business entities over which the official, or the official and his or her immediate family, exercise sole direction and control. Regulation 18704(d)(2)(C).

If a public official wishes to speak on a matter related to his or her "personal interests," the official must publicly identify the financial interest (including all of the specific details required by the regulation). Regulation 18707(a)(1)(A). The public identification must be made orally and be included in the official public record. Regulation 18707(a)(1)(B). Subsequently, the official must recuse himself or herself and leave the dais to speak from the same area as the members of the public. Regulation 18707(a)(3)(B). Like other members of the public, the official may listen to the comments of other speakers on the matter. *Id.*

Note that when a public official abstains from a decision, his or her presence does not count toward achieving a quorum. Regulation 18707(a)(3). Accordingly, if several officials must abstain from a decision under the Political Reform Act, there may not be sufficient members of the body present to consider a matter under the Brown Act. In such a circumstance, it may be possible to use the exception for legally required participation, as discussed above.

5. Penalties for Violation

Administrative, civil, and criminal penalties exist for violations of the conflict of interest provisions of the Act. The FPPC may levy administrative penalties after a hearing and may impose a fine of up to $5,000 per violation, a cease and desist order, and an order to file reports. § 83116. The FPPC recently updated regulations providing for streamlined administrative enforcement procedures and specific penalties for various types of violations. Regulations 18360, 18360.1, 18360.2, 18360.3. For example, if a public official fails to timely file their Form 700, the official may be eligible to accept a Warning Letter from the FPPC, complete the Political Reform Education Program ("PREP"), and pay a fine depending on the gravity of the violation of between $200 to $600 (Tier One violation) or between $800 to $1,200 (Tier Two violation). Regulation 18360.2 (a) and 18360.3 (a). Similarly, if a public official fails to report an economic interest on their Form 700, the official may be eligible to accept a Warning Letter, complete the PREP, and pay a fine depending on the gravity of the violation of between $100 to $500 (Tier One violation) or between $600 to $1,000 (Tier Two violation). Regulation 18360.2 (a) and 18360.3 (a).

Civil penalties may also include injunctive relief that may be sought by the district attorney or any person residing in the jurisdiction. § 91003(a). In the event a court finds that the actions would not have been taken but for the action of the official with the conflict of interest, the court is empowered to void the decision. § 91003(b). Misdemeanor criminal penalties are provided in situations where a knowing or willful violation of the act occurs, and generally, persons convicted of violating the Act may not be a candidate for elective office or act as a lobbyist for four years after the conviction. §§ 91000, 91002. The statute of limitations for civil and criminal enforcement

actions is four years from the date of the violation. §§ 91000(c), 91011(b). The statute of limitations for administrative actions brought by the FPPC is five years from the date of the violation. § 91000.5.

6. Seeking Advice on Conflict of Interest Questions

It is important to note that only a formal advice letter from the FPPC staff can immunize a public official from potential enforcement by the FPPC or the District Attorney in the event the public official participates in a decision and someone subsequently alleges the public official had a prohibited conflict of interest. A formal advice letter usually takes the FPPC staff at least a month to prepare, is only provided if the request relates to prospective acts (as distinguished from past acts), and if it contains sufficient facts upon which the FPPC is able to render a decision. Informal written advice (without immunity from potential enforcement action) may also be requested from the FPPC staff as well as informal telephonic advice through their technical assistance division at 1-866-ASK-FPPC (1-866-275-3772). Based on the time frames required to obtain formal or informal written advice from the FPPC, it is important for public officials to consult their city attorney or local agency counsel as early as possible so as to provide adequate time to gather all relevant facts, draft a letter to the FPPC, and respond to the advice once given.

B. Government Code Section 1090

Government Code Section 1090 provides in relevant part: "[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members."

The purpose of the prohibition contained in Section 1090 is to preclude a public official from using his or her position to obtain business or financial advantage through the approval of contracts by the public entities which he or she serves. As more fully explained below, the prohibition applies to not only preclude a member of the body or board that approves the contract from directly contracting with that same public entity, but it also applies when the public official has a financial or other specified relationship to the entity that seeks to contract with the public entity. The intent of the law is to remove the possibility of any personal influence that might bear on an official's decision-making activities on contracts executed by his or her public entity.

Upon the enactment of the PRA in 1974, questions arose as to whether that new law impliedly repealed or preempted the provisions of Section 1090. The California Attorney General addressed this issue first, concluding in a 1976 opinion that the Act did not implicitly repeal or preempt Section 1090. 59 Ops. Cal. Att'y Gen. 604, 671 (1976). Since that time, the courts and the Attorney General have consistently considered Section 1090 as having continuing effect. For example, in *People v. Honig*, 48 Cal. App. 4th 289, 328-29 (1996), the defendant in a criminal case for violations of Section 1090 argued that the Act superseded Section 1090. The California Court of Appeal declined to so rule, holding instead that the term "financially interested" in Section 1090 has a different meaning than the term "material financial effect" in the Act. In another case,

the California Court of Appeal again held that the Act and Section 1090 are "two different statutory schemes." *City of Vernon v. Central Basin Mun. Water Dist.*, 69 Cal. App. 4th 508, 513 (1999); see also *Fraser-Yamor Agency, Inc. v. County of Del Norte*, 68 Cal. App. 3d 201 (1977); *People v. Vallerga*, 67 Cal. App. 3d 847 (1977); *City Council v. McKinley*, 80 Cal. App. 3d 204 (1978); *City of Imperial Beach v. Bailey*, 103 Cal. App. 3d 191 (1980); *Thomson* v. Call, 38 Cal. 3d 633 (1985); *Campagna v. City of Sanger*, 42 Cal. App. 4th 533 (1996); 67 Ops. Cal. Att'y Gen. 369, 375 (1984); 69 Ops. Cal. Att'y Gen. 102 (1986); 70 Ops. Cal. Att'y Gen. 45, 47 (1987); 73 Ops. Cal. Att'y Gen. 191, 194-95 (1990).

Both the PRA and the common law (meaning court-made) doctrine against conflicts of interest require the public official with a conflict of interest to abstain from participation in the decision. Section 1090, by contrast, also prohibits the public entity from entering into a contract in which one of its officers has a financial interest, unless certain exceptions apply.

If the conflicted official is a member of a board or commission that executes the contract, he or she is conclusively presumed to be involved in the making of his or her agency's contracts. *Thomson v. Call*, 38 Cal. 3d at 649. This absolute prohibition applies regardless of whether the contract is found to be fair and equitable or the official abstains from all participation in the decision. *Thomson*, 38 Cal. 3d at 649-50; *Fraser-Yamor Agency*, 68 Cal. App. 3d at 211-12; *City of Imperial Beach*, 103 Cal. App. 3d at 195. The only way a public entity could still enter into such a contract – i.e., in which an official who is a member of the board or commission that executes the contract has a financial interest – would be if that interest qualifies as a "remote interest" or "non-interest" within the meaning of specified provisions discussed below.

1. Three Principal Components of Section 1090

The prohibition contained in Section 1090 involves three principal components: (1) the person subject to the prohibition must be an officer or employee of one of the types of governmental entities listed in Section 1090; (2) the public officer or employee must be "financially interested" in a contract; and (3) the contract must be made by either the public official in his or her official capacity or by the body or board of which the official is a member.

a. Officer or Employee of Listed Government Entity

The first element is whether the person subject to the prohibition is a member of the Legislature or an officer or employee of the state, a county, a district, a judicial district, or a city. Virtually every officer or employee of a municipality or local governmental district is subject to the prohibition of Section 1090. In 2018, the Attorney General concluded that a California charter school's governing body is also subject to Section 1090. 101 Ops. Cal. Atty. Gen. 92.

In recent years, the courts also have concluded that consultants may be considered "employees" for the purpose of civil liability under Section 1090. In 2017, the California Supreme Court held that Section 1090 applies to independent contractors "when they have duties to engage in or advise on public contracting that they are expected to

carry out on the government's behalf." *People v. Superior Court (Sahlolbei)*, 3 Cal. 5th 230 (2017); see also, *California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc.*, 148 Cal. App. 4th 682, 691 (2007); see also, *Hub City Solid Waste Services, Inc. v. City of Compton*, 186 Cal. App. 4th 1114, 1124-1125 (2010). Courts have held that even private companies may be subject to Section 1090 where the company has the potential to exert "considerable influence" over the agency's contracting decision. *Davis v. Fresno Unified School District*, 237 Cal. App. 4th 261 (2015); *McGee v. Balfour Beatty Construction*, LLC, 247 Cal. App. 4th 235, 261 (2016). In 2019, the California Court of Appeal clarified that this "considerable influence" standard means that a consultant's mere provision of services to a public agency does not create a *per se* conflict of interest precluding future contracts, if, in the initial transaction, the consultant was not entrusted with acting on behalf of the public agency. *California Taxpayers Action Network v. Taber Construction, Inc.*, 42 Cal. App. 5th 824, 835 (2019); *see*, *Straus* Advice Letter, FPPC No. A-22-064, 2022 WL 4134918.

Section 1090 also regulates so-called "follow-on contracts" in which an independent contractor's duties and services under one contract includes "engaging in or advising on public contracting on behalf of the public entity," and the contractor ultimately awards, or advises the entity to award, subsequent contracts to itself. § 1097.6(a). For example, the FPPC found that Section 1090 prohibited an affiliate of an independent contractor that had been hired to advise Humboldt County in drafting a Request for Proposals for a cannabis marketing contract from subsequently bidding on the same contract. *See*, *Adair* Advice Letter, FPPC No. A-21-137, 2021 WL 6504112 (2021).

Acknowledging potential ambiguities and practical limitations in the law, the recently adopted Assembly Bill 334, which added Government Code Section 1097.6, states that an independent contractor is not an "officer" for purposes of Section 1090 "if the independent contractor's duties and services related to the initial contract did not include engaging in or advising on public contracting on behalf of the public entity." § 1097.6(a)(1). "Engaging in or advising on public contracting" includes preparing, or assisting the public entity with preparing, a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity.[26] § 1097.6(a)(2). Even if the independent contractor is an "officer," the independent contractor may still enter into a subsequent contract for a later phase of the same project if it did not "engage in or advise on the making of the subsequent contract during its performance of the initial contract." § 1097.6(b)(1). This means the independent contractor's role in the initial contract was "limited to conceptual, preliminary, or initial plans or specifications and all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications." § 1097.6(b)(2).

Assembly Bill 334 also added a "safe harbor" provision to help shield persons who rely in good faith on the language of the newly added Section 1097.6 from liability.

[26] By contrast, an independent contractor does not "engage in or advise on the making of the subsequent contract" by participating in the planning, discussions, or drawing of plans or specifications during an initial stage of a project if that participation is limited to conceptual, preliminary, or initial plans or specifications and all bidders or proposers for the subsequent contract have access to the same information, including all conceptual, preliminary, or initial plans or specifications. § 1097.6(b)(2).

§ 1097.6(c). Any person who acts in good faith reliance on Section 1097.6 will not be subject to criminal, civil or administrative enforcement if the contractor is not in breach of the initial contract, and the initial contract includes the prescribed language set forth in Section 1097.6(c)(1). Even if the initial contract does not include the statutorily prescribed language, a person may still defend against an enforcement action by showing that the contractor's duties did not include engaging in or advising on public contracting, or that the contractor did not actually engage in or advise on making any subsequent contracts. § 1097.6(d).

In light of the FPPC guidance on this issue, we advise that both public agencies and independent contractors carefully evaluate whether their duties and obligations include engaging in or advising on public contracting. If so, their involvement in those contracting decisions must be evaluated for compliance with Section 1090.

b. Financial Interest in a Contract

The second element of the prohibition is the existence of a direct or indirect financial interest in a contract. The courts have interpreted the term "financially interested" as including any direct interest, such as that involved when a public official enters directly into a contract with the body of which he is a member. *Thomson v. Call*, 38 Cal. 3d 633 (1985). The courts have also interpreted "financially interested" as including indirect financial interests in a contract, where, for example, a public official has a business relationship with the entity that would be contracting with the public entity, or when the public official would gain something financially by the making of the contract. *Fraser-Yamor Agency*, 68 Cal. App. 3d 201 (1977); *Finnegan v. Schrader*, 91 Cal. App. 4th 572, 579 (2001). In *Thomson v. Call*, the California Supreme Court described the breadth of the statute this way:

> "Section 1090 forbids city officers . . . from being 'financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.' The proscribed interest certainly includes any direct interest, such as that involved when an officer enters directly into a contract with the body of which he is a member. California courts have also consistently voided such contracts where the public officer was found to have an indirect interest therein. . . . Neither the absence of actual fraud nor the possibility of a 'good faith' mistake on [the officer's] part can affect the conclusion that this contract violates section 1090 and is therefore void."

38 Cal. 3d at 645-46 (citations omitted).

In *Thomson*, a council member sold certain real property to a third party, knowing that the city was negotiating a deal to acquire multiple parcels of property in that area for a public park. The third party then conveyed the council member's property to the city, in an apparent attempt to evade the provisions of Section 1090. The court essentially "unwound" and invalidated the entire transaction based on the council member's interest in the transaction. The court refused to focus on the isolated contract between the city and the third party that bought the property from the council member, but

rather viewed all of the successive contracts as one complex multi-party agreement. The court ordered the council member to disgorge all funds he received in the transaction and ordered that the city retain title to the property. The court noted that this type of severe remedy was necessary to discourage violations of Section 1090.

Other decisions have followed this same broad reading of "indirect interests." In *People v. Vallerga*, the California Court of Appeal summarized court decisions addressing financial interests under Section 1090 as follows: "However devious and winding the chain may be which connects the officer with the forbidden contract, if it can be followed and the connection made, the contract is void." 67 Cal. App. 3d 847, 867 (1977); see also *People v. Honig*, 48 Cal. App. 4th 289, 315 (1996) (stating the same rule). The scope of indirect interests that could form a "devious and winding chain" back to a public contract is broad, but this reflects the judicial stance of vigilant enforcement of Section 1090. See, e.g., *Thomson*, 38 Cal. 3d at 652 ("[T]he policy of strict enforcement of conflict-of-interest statutes . . . provides a strong disincentive for those officers who might be tempted to take personal advantage of their public offices, and it is a bright-line remedy which may be appropriate in many different factual situations."); *Berka v. Woodward*, 125 Cal. 119, 128 (1899) (noting the need for "strict enforcement" of the conflict of interest statutes).

Although Section 1090 traditionally has been interpreted broadly, a California appellate decision warned against an overly broad interpretation of the term "financial interest" for the purpose of Section 1090. See *Eden Township Healthcare District v. Sutter Health*, 202 Cal. App. 4th 208, 228 (2011). The court acknowledged the general principle that the "defining characteristic of a prohibited financial interest is whether it has the potential to divide an official's loyalties and compromise the undivided representation of the public interest the official is charged with protecting." *Id.* at 221. The court concluded that the salaried CEO of a non-profit medical center, who also served on the board of a hospital district, was not financially interested in contracts between the medical center and the hospital district, despite the clear potential effect on his employer. *Id.* at 222. The court noted that there was "nothing in the record to support the inference that the [agreements] bear any relationship to [the CEO's] continued employment" with the medical center. *Id.* at 223-224. Moreover, the court noted that there was "no evidence that [the CEO would] derive any financial benefit arising from the" agreements in question. *Id.* at 226. The court stated broadly:

> In our view, if the contract itself offers no benefit to the official, either directly or indirectly, then the official is not financially interested in the contract and any explicit legislative exemption for such a circumstance would be unnecessarily redundant.

Id. at 228. The court distinguished the case of *Miller v. City of Martinez*, 28 Cal. App. 2d 364 (1938), in which the complaint alleged that a council member had a financial interest in a contract with a company that employed him and in which he also held stock. *Id.* at 226.

The ruling in *Eden Township* could be construed to suggest that an official is only "financially interested" in a contract that affects the official's compensation or

continued employment.[27] In light of subsequent FPPC advice letters, however, there is continued uncertainty regarding the application and interpretation of the court's holding in *Eden Township*.[28] As such, we recommend that public officials seek legal assistance whenever a potential Section 1090 conflict arises.

In addition to a "financial interest," there must be a contract in order for Section 1090 to apply, as described below. General contract principles apply to this determination and include such arrangements as purchase and service contracts as well as development agreements between a city and a developer (78 Ops. Cal. Att'y Gen. 230 (1995)); 82 Ops. Cal. Att'y Gen. 126, 129 n.4 (1999)), joint powers agreements (*People v. Gnass*, 101 Cal. App. 4th 1271, 1301 (2002)), and payments for conference attendance expenses (75 Ops. Cal. Att'y Gen. 20 (1992)).

c. A Contract "Made" by the Official or by a Body or Board of which the Official Is a Member

The third element necessary for a Section 1090 violation is that the contract has to be "made" either by the official or employee acting in his or her official capacity, or by any body or board of which the official is a member. The "making" of a contract is most commonly implicated by a city council's approval of a simple purchase order as part of the approval of a demand warrant registrar; this is likely to constitute the making of a contract within the scope of Section 1090. The courts have construed the term "made" as encompassing such elements in the formation of a contract as preliminary discussions, negotiations, compromises, reasoning, planning, and drawing of plans or specifications and solicitation for bids. *Millbrae Ass'n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 237 (1968). For example, in *City Council of San Diego v. McKinley*, 80 Cal. App. 3d 204, 212 (1978), a court of appeal found a Section 1090 violation when a city council entered into an agreement with a landscape architectural firm, of which the president, a stockholder, was also a member of the city's parks and recreation board. The board investigated and advised the city council on parks and recreation development issues, and it approved plans for a Japanese garden for which the board member's company ultimately received the development contract. Even though the board member was not a member of the city council, which awarded the contract to his company, the board member's participation in the planning for the garden was sufficient to constitute participation in "making" the contract:

> "[T]here is ample authority the negotiations, discussions, reasoning, planning, and give and take which go beforehand in the making of a decision to commit oneself must all be deemed to be a part of the making of an agreement in the broad sense. [Citation omitted.] Thus, the final execution of a contract, which is the time when the contract is

[27] See also, *Ansolabehere* Advice Letter, FPPC No. A-15-180, 2015 WL 9680325 (2015); *Devaney* Advice Letter, FPPC No. A-15-213, 2015 WL 7252462 (2015); but cf. Carney Advice Letter, FPPC No. A-16-073, 2016 WL 3212417 (2016) and *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016).

[28] See, e.g., *Diaz* Advice Letter, FPPC No. A-16-214, 2016 WL 7033000 (2016) and *Roy* Advice Letter, FPPC No. A-16-157, 2016 WL 6565871 (2016).

> technically made, is not the only time when a conflict of interest may be presented."

80 Cal. App. 3d at 212.

Similarly, in *Stigall v. City of Taft*, 58 Cal. 2d 565, 569-70 (1962), the California Supreme Court held that an impermissible conflict existed in a contract with a plumbing company owned by a council member, even though the council member resigned before the plumbing company's bid was accepted. The court recognized that activities prior to the signing of a contract can be integral to the decision to accept the contract. *Id.* at 569; see also *Campagna v. City of Sanger*, 42 Cal. App. 4th 533, 538 (1996).

2. Exceptions to Section 1090

a. "Remote Interest" Exception

There are two categories of exceptions to Section 1090. The first, encompassing what are commonly referred to as "remote interests," is set forth in Section 1091. If an official has only a remote interest in a contract, then the local agency may enter into the contract as long as the official abstains from participating in the making of the contract in any way. Although this is not an exhaustive list of the "remote interest" exceptions, a few examples of "remote interest" exceptions include the following[29]:

- Remote interest exception for a compensated officer or employee of a nonprofit corporation (Section 1091 (b)(1));
- Remote interest exception for a person receiving a government salary, per diem, or reimbursement for expenses, even when the contract involves the department of the government entity that employs the official (Section 1091 (b)(13));
- Remote interest exception for a litigation settlement agreement between an officer that is a party to litigation involving the body or board of which the officer is a member (Section 1091 (b)(15); and
- Remote interest exception for the owner or partner of a firm who serves as an appointed member of an unelected board or commission of the contracting agency if the owner or partner recuses himself or herself from: (1) providing any advice to the contracting agency regarding the contract between the firm and the contracting agency; and (2) any participation in reviewing a project that results from that contract (Section 1091 (b)(17)).

[29] Effective January 1, 2026, Senate Bill 1111 ("SB 1111") amends the list of the "remote interest" exceptions in Section 1091 to include a remote interest exception for a public officer if the public officer's child is an officer or director of, or has an ownership interest of 10 percent or more in, a party to a contract entered into by the body or board of which the officer is a member, if this information is actually known to the public officer.

The "remote interest" exception applies only if the interest is disclosed to the body that approves the contract, the disclosure is noted in that body's official records, and the official abstains from voting. Further, members with a "remote interest" may not attempt to influence any other member of the body or board of which they are members to enter into the contract.

b. "Non-Interest" Exception

The second category of exceptions is found in Section 1091.5. These are called "non-interest" exceptions and apply to a type of interest that is completely exempt from Section 1090 and, if held by the official, does not require abstention. Unlike the "remote interest" exceptions in Section 1091, most of the "non-interest" exceptions listed in Section 1091.5 are available to both officers and employees who are covered by the general prohibition in Section 1090. Although this is not an exhaustive list, examples of some of those exceptions are listed below:

- Non-interest exception for government salary, per diem, or reimbursement of expenses when the contract does not involve the department of the government entity that employs the officer or employee (Section 1091.5 (a)(9));

- Non-interest exception for government salary to an officer's or employee's spouse when the spouse was employed by the government entity for at least one year prior to the officer's or employee's election or appointment (Section 1091.5 (a)(6));

- Non-interest exception for a non-compensated officer of a nonprofit corporation that supports the functions of the public entity or to which the public entity is required to give particular consideration (Section 1091.5 (a)(8));

- Non-interest exception for non-salaried members of a nonprofit corporation (Section 1091.5 (a)(7));

- Non-interest exception involving the receipt of public services on the same terms as would be provided if the officer were not a member of the governmental body or board (Section 1091.5(a)(3)); and

- Non-interest exception for contracts for public services between a special district and its board members if the special district requires board members to be landowners or representatives of a landowner and the contract is made on the same terms and conditions granted to everyone else. (Section 1091.5(a)(14)). For purposes of the exception, "public services" include the powers and purposes generally provided pursuant to provisions of the Water Code relating to irrigation districts, California water districts, water storage districts, or reclamation districts.

3. The "Rule of Necessity"

In limited circumstances, the "rule of necessity" may allow a local agency to enter into a contract that Section 1090 would otherwise prohibit. *See*, *Eldridge v. Sierra View Local Hospital Dist.* (1990) 224 Cal. App. 3d 311, 321. This rule ensures that essential government functions can be performed even where a conflict of interest exists. *Id.*

This exception has been applied in at least two specific types of situations:

- In procurement situations for essential supplies or services when no source other than the one that triggers the conflict is available. For example, the Attorney General concluded that a city could enter into contracts related to an existing cable television franchise owned by a council member where there were no other cable providers within the city.[30] 76 Ops. Cal. Atty. Gen. 118 (1993).

- In non-procurement situations to carry out essential duties of the office when the official or board is the only one authorized to act. For example, the Attorney General concluded that Section 1090 did not prohibit a school district from entering into a collective bargaining agreement with its teachers' union, even though the spouse of a district board member was represented by that union. 69 Ops. Cal. Atty. Gen. 102 (1986).

When the "rule of necessity" applies, all conflicted members must refrain from participating in the making of the contract. *Ennis* Advice Letter, FPPC No. A-21-112, A-21-113, 2021 WL 4557249 (2021). However, if a quorum is no longer available as a result of that abstention, the minimum necessary number of conflicted members may participate, by drawing lots or some other impartial method employed to select them. 224 Cal. App. 3d at pp. 322-323.

[30] Importantly, the Attorney General noted that the council member acquired the franchise *prior* to his election to the city council. Section 1090 would have prohibited a *current* member of a city council from obtaining a new cable television franchise from the city during his or her term of office. 76 Ops. Cal. Atty. Gen. 118 (1993)

4. A Contract Made in Violation of Section 1090 is Void and Officials Violating Section 1090 Are Subject to Severe Penalties

Finally, it is important to note the extreme consequences of a Section 1090 violation and thus the caution with which persons must act to ensure compliance with this law. A public official who willfully violates any of the provisions of Section 1090 "is punishable by a fine of not more than $1,000, or by imprisonment in the state prison, and is forever disqualified from holding any office in this state." § 1097. The civil fines applicable to Section 1090 violations now can be up to the greater of $10,000 or three times the value of the financial benefit received by the defendant for each violation. § 1097.3(a). In addition, a contract made in violation of Section 1090 is void under Section 1092. *People ex rel. State v. Drinkhouse*, 4 Cal. App. 3d 931, 935 (1970) ("[A] contract in which a public officer is interested is void, rather than voidable as the statute indicates."). As with the Political Reform Act, acting on the advice of counsel is not a defense to a Section 1090 violation. See *People v. Chacon*, 40 Cal. 4th 558 (2007); *Chapman v. Superior Court*, 130 Cal. App. 4th 261 (2005).

Given these consequences, it is advisable for public officials to be very cautious in deciding whether they may participate in a contracting decision based on the existence of a "non-interest exception," whether they must abstain from those decisions based on the application of a "remote interest" exception, or whether their financial interest lies outside any exception and therefore precludes the public entity from entering into the contract altogether.

5. Aiding and Abetting Section 1090 Violations

In 2014, the California Legislature adopted Senate Bill 952, which added a subsection (b) to Government Code Section 1090, which now reads: "An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a)" of Section 1090. The Legislature added a similar provision to Section 1093 such that a person "shall not aid or abet the Treasurer, Controller, a county or city officer, or their deputy or clerk" in purchasing or selling "warrants, scrip, orders, demands, claims, or other evidences of indebtedness" for personal gain. § 1093. The Legislature also added a penalty for these crimes to Section 1097, which applies when a person "willfully aids or abets an officer or person in violating" Section 1090 or certain other conflict provisions. In light of these provisions, city officers and employees must be careful to avoid "aiding and abetting" a Government Code Section 1090 violation.

6. Seeking FPPC Advice on Section 1090

In 2013, the State Legislature adopted Assembly Bill 1090, which amended the enforcement provisions applicable to Government Code Section 1090. With the adoption of AB 1090, a person who is subject to the prohibition in Government Code Section 1090 may request advice and/or a formal opinion from the FPPC. § 1097.1(c). Opinions or advice must be requested prior to any action being taken, as the FPPC cannot issue options or advice based on past conduct. § 1097.1(c)(2). Such advice is admissible as evidence of good faith conduct by the requester if the requester truthfully

disclosed all material facts and relied on the advice or opinion of the FPPC. § 1097.1(c). In addition, the FPPC is authorized to enforce the prohibition in Government Code Section 1090 through administrative or civil actions. § 1097.1(a).

7. Statute of Limitations for Section 1090 Violations

The statute of limitations for bringing a criminal prosecution under Section 1090 is three years from the discovery of the violation. *People v. Honig*, 48 Cal. App. 4th 289, 304 (fn. 1) (1996); Penal Code §§ 801, 803(c). However, under Government Code Section 1092, a four-year statute of limitations applies to actions brought under Section 1090 to invalidate a contract. This four-year statute of limitations begins to run from the date that the plaintiff has discovered the violation, or in the exercise of reasonable care, should have discovered the violation. A four-year statute of limitations also applies to civil actions brought by the FPPC. § 1097.3(c).

C. Common Law Doctrine Against Conflicts of Interest

The common law doctrine against conflicts of interest constitutes the courts' expression of the public policy against public officials using their official positions for their private benefit. See *Terry v. Bender*, 143 Cal. App. 2d 198, 206 (1956). This doctrine provides an independent basis for requiring public officials and employees to abstain from participating in matters in which they have a financial interest. Violation of the doctrine can amount to official misconduct and can result in loss of office. *Nussbaum v. Weeks*, 214 Cal. App. 3d 1589 (1989).

By virtue of holding public office, an elected official "is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public." *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928). An elected official bears a fiduciary duty to exercise the powers of office for the benefit of the public and is not permitted to use those powers for the benefit of a private interest. *Id.*

In *All Towing Services LLC v. City of Orange*, 220 Cal. App. 4th 946 (2013), the court applied the common law doctrine against conflicts of interest and held that campaign contributions from tow truck companies to councilmembers did not create a common law conflict of interest for councilmembers in decisions regarding a towing contract.[31] In reaching its conclusion, the court explained that "a campaign contribution disqualification rule could be easily manipulated and abused [which] counsels against finding such a rule in the common law" and "[a]dopting such a sweeping rule would also violate the First Amendment rights of those who wish to participate in the electoral process by making campaign contributions."

The common law doctrine against conflicts of interest has been primarily applied to require a public official to abstain from participation in cases where the official's private financial interest may conflict with his or her official duties. 64 Ops. Cal. Att'y Gen. 795,

[31] While the campaign contributions in *All Towing Services LLC* did not create a common law conflict of interest, campaign contributions may create a conflict of interest for public officials under the Levine Act (as discussed in Section II.A of this Handbook).

797 (1981). However, the doctrine also applies when specific circumstances preclude a public official from being a disinterested, unbiased decision maker for a quasi-judicial matter. In one case, a council member who voted to deny permits for a condominium project near his house was deemed to have a common law conflict of interest (i.e., bias) due to his interest in preserving his ocean view and his personal animosity toward the applicants. *Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

However, a more recent court decision creates some uncertainty as to whether the common law doctrine should be applied when statutory conflict of interest laws already address the particular situation. In *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1233 (2000), the court declined to construe allegations of an official's bias in a decision to constitute a conflict of interest at common law when the applicable statutes already had been construed not to create a conflict of interest in that situation. In *BreakZone*, the court indicated, "[w]e continue to be cautious in finding common law conflicts of interest . . . . We reject the application of the doctrine in this case, assuming, arguendo, it exists." 81 Cal. App. 4th at 1233.

II. OTHER SPECIALIZED CONFLICTS OF INTEREST LAWS AND REGULATIONS

A. Campaign Contributions

1. Conflicts of Interests Arising for Elected and Appointed Officials

A portion of the Political Reform Act known as the "Levine Act" establishes specific restrictions on the receipt and solicitation of campaign contributions, and participation of public officials in decisions affecting campaign contributors. A recent law extended these prohibitions that previously only applied to appointed officials to elected officials as well.[32] Another recent law introduced additional changes, including an increase to the contribution threshold from over $250 to over $500.[33]

As of January 1, 2025, a local elected or appointed official cannot: (i) solicit, accept or direct a campaign donation over $500 from a party or a participant, or their agent, involved in a matter presently pending before the local agency and during the 12 months following the final decision; or (ii) participate in a proceeding involving a party or a participant, or their agent, from whom the official accepted over $500 within the past 12 months. § 84308. These requirements only apply if the elected officer or the body of which they are a member has the authority to make any decision or recommendation in a proceeding involving a license, permit or other entitlement for use, as defined. §§ 84308 (b)(2), (c)(2).

[32] Senate Bill ("SB") 1439 (2022).
[33] SB 1243 (2024) (operative as of January 1, 2025).

a. Disclosure Requirement

Officers must disclose disqualifying contributions either orally or in writing on the public record at the beginning of a public meeting before rendering any decision in the proceeding. If the disqualifying contribution is discovered during the public meeting, the officer should make the public disclosure as soon as possible, prior to continuing to take part in the decision. In the event that there is no public meeting held regarding the decision, the officer should submit a written disclosure to the clerk, and the written disclosure must be entered into the agency's official records. Regulation 18438.8.

b. Prohibition and Disqualification

For purposes of the disclosure and recusal requirement under Section 84308(c), an officer may not participate in a decision if the officer "willfully" or "knowingly" received a disqualifying contribution over $500. This includes actual knowledge of the contribution; a party's disclosure of a contribution; or an officer's awareness of facts establishing other reasons to know of the contribution, which requires a fact-specific analysis. Regulation 18438.7.

c. Fundraising Ban

While a proceeding is pending and for 12 months following the final decision date, an officer cannot accept, solicit, or direct a contribution over $500 from any party, participant, or agent, regardless of whether it is on the officer's own behalf or on behalf of any another officer, candidate for office, or committee. §§ 84308 (b)(1).

d. Participants

A conflict of interest involving a "participant," defined under Regulation 18438.4, arises only if the officer willfully or knowingly received the contribution **and** knows or has reason to know that the participant has a financial interest in the decision. § 84308 (b)(1). Under Regulation 18438.7, "knowledge" includes actual knowledge or knowledge of facts revealed by the participant in writing or orally during the proceeding that makes the person's financial interest "apparent."

e. Agents

An "agent" is a person or entity who represents a party or participant for compensation and appears before or otherwise communicates with an agency in order to influence the proceeding on behalf of the party or participant. § 84308(h). A person does not "communicate with the agency with the purpose of influencing the proceeding" if the person prepares architectural, engineering, or similar drawings or submissions for a client to submit in a proceeding as part of the person's profession and does not contact the agency other than to assist staff in evaluating the prepared documents. § 84308(h)(4). A person is also not an agent if the person only provides technical data or analysis to the agency and does not otherwise directly communicate with the agency for the purpose of influencing the proceeding.

As of January 1, 2025, an agent can only make contributions to an officer before a matter is pending and cannot make a contribution **in any amount** (in contrast with the $500 threshold for parties and participants) to an officer during the proceeding and for 12 months following the final decision date. This means that an agent has a separate obligation to forgo making any contribution during, and for 12 months after a proceeding. , However, officers are only prohibited from accepting contributions over $500.

f. Aggregated Contributions

Contributions must be aggregated to determine whether a contributor has exceeded the $500 threshold during a 12-month period for purposes of Section 84308 for the following:

- All of the party's own contributions.
- All of the participant's own contributions.
- All of the agent's own contributions during either the prior 12 months or the period beginning the date the agent was first hired (whichever period is shorter). Please note that as of January 1, 2025, an officer is not required to combine the contributions of an agent with contributions from their affiliated party or participant. Government Code Section 84308(g).
- All of the contributions made by an individual (other than an uncompensated non-profit officer) or entity, if the individual directs or controls an entity's contributions or if multiple entities made contributions that are directed or controlled by a majority of the same persons. § 82015.5.
- All of the contributions made by entities that are majority owned (over 50% ownership) by a person with contributions of the majority owner and all other entities majority owned by that person (unless these other entities acted independently).

The requirement to aggregate depends on whether officers are actually aware of relevant facts. Officers are only required to aggregate contributions if the involved party or participant has disclosed the contribution on the record of the proceeding and the officer otherwise knows facts establishing that the contribution must be aggregated pursuant to Regulation 18438.5 and Government Code Section 82015.5. Otherwise, the officer does not know or have reason to know that the contributions must be aggregated.

g. Legally Required Participation

An officer who has received a disqualifying contribution may still participate in a decision if the officer's participation is "legally required." This exception to the recusal requirement only applies if there exists "no alternative source of decision consistent with

the purposes and the terms of the statute authorizing the decision," and only if a quorum cannot be otherwise convened. Regulation 18705.

In order for the legally required participation exception to be invoked, the officer or an agency employee must state the existence of the potential conflict with particularity, orally or in writing. This disclosure must be made prior to the decision if during an open session, and either during the open session or immediately after the closed session if the decision is being made in closed session. The disclosure should specify that the officer has received a contribution over $500 from a party or participant within the last 12 months, along with the name of the contributor, a summary description of the potential conflict, and any legal basis for the contention that there is no alternative source of decision. Other steps and procedures must also be followed by which one or more disqualified members are selected at random to comprise the minimum number of members needed to take action on the item. The pool of disqualified members from which one or more disqualified members are selected at random to participate in a decision includes those with a financial interest in a decision and those who received a disqualifying contribution under Section 84308.

h. Curing a Violation

An officer who receives a prohibited donation may cure the violation depending on when the contribution was received. If a prohibited contribution was received during the 12 months *before* the final decision, then the contribution may be returned within 30 days from the time the officer either makes any decision or "knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use," whichever comes last. § 84308(d)(1). However, the violation can only be cured if the contribution was received from a party prior to the officer knowing or having reason to know that the proceeding involving the party had commenced. In addition, the violation can only be cured if the officer received a contribution from a participant prior to knowing or having reason to know that the participant had a financial interest. Regulation 18438.7(c).

Contributions of more than $500 may not be accepted *during* the proceeding and there is no "cure" for that violation. An official who unwillingly or unknowingly receives a contribution during the 12 months *after* the final decision may cure the violation by returning the excess amount "within 30 days of accepting, soliciting, or directing the contribution, whichever comes latest." The official or a controlled campaign committee must also maintain records of curing such violations. § 84308(d)(2)(C).

2. Application of Federal Corruption Laws to the Offer or Solicitation of Illegal Campaign Contributions Tied to an Official Act

Federal corruption laws apply to situations where the receipt of illegal, laundered or unreported campaign contributions are tied to an official act. In one case arising out of the City of San Diego, two council members were charged and convicted of wire fraud for conspiring to change the city's ordinance regulating adult-oriented businesses in exchange for campaign contributions from an adult-oriented business that had been illegally "laundered" through contributions made by residents of the city or which had

been unreported and which constituted bribes. See *United States v. Inzunza*, 303 F. Supp. 2d 1041, 1043 (S.D. Cal. 2004) for a list of the charges; the case was referred to in the press as the San Diego "Strippergate" case. The charges included the alleged use of wire communications in interstate commerce in furtherance of the alleged conspiracy to defraud the public of their intangible right to honest service, in violation of 18 U.S.C. §§ 1951 (the Hobbs Act) and 1952 (Interstate Transportation in Aid of Racketeering). One of those convictions was later overturned. However, the case points out that direct connections between official acts and illegal or unreported campaign contributions may result in charges of bribery under California law and a violation of certain federal wire fraud and racketeering laws.

In a more recent case, a former Los Angeles deputy mayor, former Los Angeles city council member and Planning and Land Use Management Committee chairman, and former aide to the city council member were prosecuted on federal bribery charges related to the receipt of illegal campaign contributions from real estate developers. See *United States v. Shen Zhen New World I, LLC* (9th Cir. 2024) 115 F.4th 1167.

3. A Long-Standing Ban on Local Agency Officials and Employees Soliciting Campaign Contributions from Officials and Employees of the Same Agency is Now Unenforceable

In an effort to avoid local agency public employees being drawn into local political campaigns or having their positions become the subject of political reward or retribution, California law, for many years, prohibited the solicitation of campaign contributions by a local agency official or employee of other officials or employees within the same local agency. Until 2023, an officer or employee of a local agency was prohibited by Section 3205 from soliciting political contributions from an officer or employee of that same local agency. However, in 2023, the Ninth Circuit Court of Appeals held that Section 3205 is unconstitutional on the grounds that it violates the political speech rights of local government employees provided to them by the First Amendment to the U.S. Constitution. The Ninth Circuit concluded that because Section 3205 did not apply equally to state employees, the ban was not sufficiently tailored to accomplish the state's goal, and the state failed to justify applying the restriction only to local government employees. See *Progressive Democrats for Social Justice v. Bonta*, 73 F.4th 1118 (2023). Unless and until the Legislature amends or re-adopts Section 3205 in a manner that withstands judicial review, local government officials and employees are no longer precluded from soliciting campaign contributions from other officials or employees in the same local agency.

B. Doctrine Against Holding Incompatible Offices

1. The Common Law Doctrine Against Holding Incompatible Offices

In addition to Government Code Section 1099 (discussed below), a common law doctrine (that is, legal principles established over time by court decisions) applies to prevent public officials from holding multiple public offices simultaneously. The common law doctrine against incompatibility of offices arose from a concern that the

public interest would suffer when one person holds two public offices which might possibly come into conflict. The California Supreme Court set forth the following test for incompatibility of offices in *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636 (1940):

> "Two offices are said to be incompatible when the holder cannot in every instance discharge the duties of each. Incompatibility arises, therefore, from the nature of the duties of the offices, when there is an inconsistency in the functions of the two, where the functions of the two are inherently inconsistent or repugnant, as where antagonism would result in the attempt by one person to discharge the duties of both offices, or where the nature and duties of the two offices are such as to render it improper from considerations of public policy for one person to retain both."

16 Cal. 2d at 641-42. Incompatibility of offices is not measured only by conflicts which do exist, but also by those conflicts which might arise. *Chapman*, 16 Cal. 2d 636, 641-42 (1940); 66 Ops. Cal. Att'y Gen. 382, 384 (1983); 64 Ops. Cal. Att'y Gen. 288, 289 (1981).

In order to determine whether two positions are in conflict, it is necessary to determine first whether the two positions are both public offices within the scope of the doctrine. No statutory definition is given to the term "public officer." However, in *Chapman*, the court stated:

> "[A] public office is said to be the right, authority, and duty, created and conferred by law — the tenure of which is not transient, occasional, or incidental — by which for a given period an individual is invested with power to perform a public function for public benefit . . . .
>
> One of the prime requisites is that the office be created by the Constitution or authorized by some statute. And it is essential that the incumbent be clothed with a part of the sovereignty of the state to be exercised in the interest of the public."

16 Cal. 2d at 640 (citation omitted).

Incompatibility can be triggered if the duties of the two offices "overlap so that their exercise may require contradictory or inconsistent action, to the detriment of the public interest." *People ex rel. Bagshaw v. Thompson*, 55 Cal. App. 2d 147, 150 (1942). Only one significant clash of duties and loyalties is required to make offices incompatible. 37 Ops. Cal. Att'y Gen. 21, 22 (1961). The policy set forth in *Chapman* includes prospective as well as present clashes of duties and loyalties. 63 Ops. Cal. Att'y Gen. 623 (1980).

Abstention has not been recognized as a remedy for incompatible offices. The general rule provides:

> "The existence of devices to avoid . . . [conflicts] neither changes the nature of the potential conflicts nor provides assurances that they would be employed. Accordingly, the ability to abstain when a conflict arises will not excuse the incompatibility or obviate the effects of the doctrine."

66 Ops. Cal. Att'y Gen. 176, 177 (1983) (citation omitted).

The effect of the doctrine of incompatibility of offices is that a public official who enters into the duties of a second office is deemed to have automatically vacated the first office if the two are incompatible. *Chapman*, 16 Cal. 2d at 644.

A list of some of the offices that the California Attorney General has found to be incompatible are as follows:

- County board of supervisors member and community college board member. 78 Ops. Cal. Att'y Gen. 316 (1995).
- Fire chief and board of supervisors member. 66 Ops. Cal. Att'y Gen. 176 (1983).
- Public utility district member and county board of supervisors member. 64 Ops. Cal. Att'y Gen. 137 (1981).
- School district trustee and council member. 73 Ops. Cal. Att'y Gen. 354 (1990).
- School board member and council member. 65 Ops. Cal. Att'y Gen. 606 (1982).
- County planning commissioner and council member. 63 Ops. Cal. Att'y Gen. 607 (1980).
- Fire chief and council member. 76 Ops. Cal. Att'y Gen. 38 (1993).
- County planning commissioner and city planning commissioner. 66 Ops. Cal. Att'y Gen. 293 (1983).
- County planning commissioner and county water district director. 64 Ops. Cal. Att'y Gen. 288 (1981).
- City planning commissioner and school district board member. 84 Ops. Cal. Att'y Gen. 91 (2001).
- City manager and school district board member. 80 Ops. Cal. Att'y Gen. 74 (1997).
- School district board member and community services district board member. 75 Ops. Cal. Att'y Gen 112 (1992).

2. The Statutory Codification of the Common Law Doctrine of Incompatible Offices – Government Code Section 1099

Government Code Section 1099 is intended to create a statutory rule against holding incompatible offices. This section is not intended to expand or contract the common

law rule and is intended to be interpreted based on precedent created through court decisions under the common law doctrine. Stats. 2005, c. 254 (S.B. 274), § 2.

Section 1099 provides that a public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee or other body, shall not simultaneously hold two public offices that are incompatible as defined by the statute. Section 1099 provides that offices are incompatible when:

- Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body;
- Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties and loyalties between the offices; or
- Public policy considerations make it improper for one person to hold both offices.

As is the case under the common law doctrine, Section 1099 provides that when two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second office. However, Section 1099 recognizes that certain state laws or possibly local ordinances may expressly provide for the simultaneous holding of particular offices and that result would not be precluded by Section 1099.[34] Section 1099 does not apply if one of the positions is a mere position of employment rather than a public office. It also does not apply when one of the positions is a member of a legislative body that has only advisory powers. § 1099(c), (d).

C. Incompatible Outside Activities

Government Code Section 1126(a) provides, in relevant part:

> "[A] local agency officer or employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to his or her duties as a local agency officer or employee or with the duties, functions, or responsibilities of his or her appointing power or the agency by which he or she is employed. . . ."

[34] See, e.g., *People ex rel. Lacey v. Robles*, 44 Cal.App.5th 804 (2020), which held that Section 1099's exception to the rule against holding incompatible offices if "simultaneous holding of the particular offices is compelled or expressly authorized by law" did not apply to an official serving as a mayor and a member of the board of directors for a water replenishment district, despite the fact that the city council and the water replenishment district adopted an ordinance and resolution, respectively, authorizing the official to simultaneously hold both offices. The court reasoned that (1) the Legislature's reference to "law" is "best understood as a reference to state, not local, law"; and (2) even if the reference to "law" could be understood to allow local jurisdictions to deem offices compatible notwithstanding a possible conflict in duties or loyalties, the water replenishment district lacked the authority to authorize its board members to hold incompatible offices.

The provisions of Section 1126 prohibit officials and employees of a local government agency from engaging in outside employment or activities where any part of the employment or activity will be subject to approval by any other officer, employee, board or commission of the local agency. Exceptions are created to permit a public official to engage in outside employment by a private business, and to permit an attorney employed by a local agency in a non-elective position to serve on an appointed or elected governmental board of another agency. §§ 1127, 1128.

However, the court in *Mazzola v. City and County of San Francisco*, 112 Cal. App. 3d 141 (1980) ruled that Section 1126 provides only authorization to implement standards for incompatibility pursuant to paragraph (b) of Section 1126. The court ruled that the restrictions of Section 1126 are not self-executing because existing and future employees should have notice that specific outside activities are, or are not compatible with their duties as an officer or employee of the local agency. Thus, Section 1126 would not bar a public official from holding a position outside his or her public agency unless the public agency in which he or she serves as a public official adopts an ordinance in compliance with the requirements of Section 1126 that specifies that the two positions or activities are incompatible. Many cities have not adopted such ordinances.

In light of the court's decision in *Mazzola*, the Attorney General ruled that Section 1126 did not apply to any elected official, such as a council member, since elected officials do not have an "appointing power" that can promulgate guidelines for their activities pursuant to Section 1126. However, if a local agency adopts such guidelines, they can be made applicable to officers and employees subordinate to the legislative body of the local agency, including members of advisory boards and commissions. § 1126(a).

D. Successor Agency and Oversight Board Conflicts

1. Form 700s for Successor Agency and Oversight Board Members

In any city that adopted a resolution establishing a successor agency to the former redevelopment agency (which is a separate legal entity), an official who already files an annual Form 700 in his or her capacity as a city official does not need to file an Assuming Office Statement ("Assuming Office Form 700") within 30 days of assuming his or her position with the successor agency as long as these same city officials are already required to disclose all categories of economic interests. The successor agency official or employee will, however, have to file an Assuming Office Form 700 if he or she is not already required to disclose as a city official all categories of economic interests.

Members of a county oversight board are also subject to the Political Reform Act.[35] This means oversight board members must comply with both the Act's conflict of interest disqualification and disclosure requirements. Oversight board members who do not

[35] Pursuant to Health & Saf. Code Section 34179(j), beginning in 2018, oversight boards for individual successor agencies in counties where more than one successor agency existed prior to 2018 were consolidated into county-wide oversight boards. These oversight boards are staffed "by the county auditor-controller, by another county entity selected by the county auditor-controller, or by a city within the county that the county auditor-controller may select after consulting with the department." (Health & Saf. Code, § 34179(j).)

also hold a concurrent county position for which they are required to broadly disclose in all of the applicable categories need to file an Assuming Office Form 700 within 30 days of their appointment. (See Regulation 18730(b)(3).)

2. Filing Officer for the Successor Agency's Statements of Economic Interests

The term "filing officer" is defined in the Act to be the office or officer with whom any statement or report is required to be filed under this title. § 82027, Regulation 18115. In determining where Form 700s are to be filed for officials of a successor agency, the city council, as the code reviewing body, may have designated either the "agency" (successor agency) or the "code reviewing body" (city council) the entity with which Form 700s are filed. § 87500(c). Regulation 18227 provides that every entity with whom forms are filed must assign to a specific official the responsibility for receiving and forwarding reports filed pursuant to Section 87500 (including Form 700s). This assigned "filing officer" has a duty to supply Form 700s, review submitted Form 700s for completeness, and notify all persons who have failed to file forms and report violations to appropriate agencies. See § 81010, Regulations 18115, 18115.1, 18115.2.

With respect to those officials of the successor agency and oversight board that are not otherwise exempt from filing Assuming Office Form 700s for their position with the successor agency, city clerks (or the successor agency secretary, if applicable) should provide forms to those persons and facilitate the filing of those forms within the required time periods .

E. Discount Passes on Common Carriers

Article XII, Section 7 of the California Constitution states:

> "A transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office. A Public Utilities Commissioner may not hold an official relation to nor have a financial interest in a person or corporation subject to regulation by the commission."

The Attorney General has explained this provision applies in the following manner:

- The prohibition applies to public officers, both elected and non-elected, but not employees.
- The prohibition applies to interstate and foreign carriers as well as domestic carriers, and to transportation received outside California.
- The prohibition applies irrespective of whether the pass or discount was provided in connection with personal or public business.
- Violation of the prohibition is punishable by forfeiture of office.

There have only been a few decisions that address this constitutional prohibition. In one opinion, the Attorney General granted leave to sue two members of a city council who accepted free airline tickets to London given by Laker Airlines as part of the airline's promotion of its new Los Angeles to London service. Despite the fact that the council members were unaware of the prohibition, the Attorney General allowed a quo warranto suit that subsequently settled before judgment. *See, e.g.,* 76 Ops. Cal. Atty. Gen. 1, 3 (1993).

In another opinion, the mayor of a city received an upgrade from a coach seat to a first class seat on Hawaiian Airlines. 76 Ops. Cal. Atty. Gen. 1 (1993). There, the mayor's ticket was one of 20 first-class upgraded tickets that the airline was allowed to provide to "high profile, prominent members of the community." At issue was whether that situation fit within an exception to the constitutional prohibition for situations when the free transportation or discount is provided to a public officer as a member of a larger group unrelated to the official's position. The Attorney General ruled that the facts did not satisfy the exception and that a violation of the prohibition had occurred.

The exception considered in that opinion stemmed out of a 1984 opinion of the Attorney General which held that a public officer could accept first-class ticket upgrades by virtue of the airline's policy to do so for all airline employees and their spouses on their honeymoon. In 67 Ops. Cal. Atty. Gen. 81 (1984), the Attorney General concluded that a public officer, whose spouse was a flight attendant, could accept a free transportation pass or discount when such was offered to all spouses of flight attendants without distinction to the official status of the recipient.

Consequently, if the pass or discount is provided to the official because of his or her position as a governmental official, the prohibition applies. If it is provided to the official as a member of a larger group that is not related to the functions of his or her office, the prohibition may not be applicable.

F. Conflicts upon Leaving Office – the "Revolving Door"

Former elected officials and former city managers are restricted from receiving compensation for lobbying their city for one year after they leave public office. This restriction also applies to elected county and district officials and their chief administrative officers or general managers, but not to department directors or other public officials and employees. § 87406.3(a). A violation of the statute constitutes a misdemeanor, and the FPPC is authorized to impose administrative fines and penalties for its violation. § 91000.

The type of lobbying subject to the ban includes both formal and informal appearances before a local agency and making any oral or written communication to the agency. The statute proscribes the appearances and communications if they are made to influence administrative or legislative action, or affect the issuance, amendment, awarding or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. § 87406.3(a).

The term "administrative actions" within the scope of the lobbying ban includes "the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial." However, matters that are "solely ministerial" are expressly excluded from the prohibition. § 87406.3(d)(1). The type of "legislative action" within the scope of the ban includes:

> "the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in the member or employee's official capacity."

§ 87406.3(d)(2). The lobbying ban does not apply to any public official who is appearing or communicating on behalf of another local governing body or public agency of which the individual is a board member, officer or employee. § 87406.3(b)(1). Therefore, if such former elected city official or former city manager is contacting his or her city on behalf of the state, a county, a school district or some other governmental entity (in his or her capacity as a board member, officer, or employee), such activity is not precluded by the ban. However, the lobbying ban ***does*** apply for the initial year if the former elected city official or former city manager serves another public agency ***as an independent contractor*** and appears or communicates on behalf of that agency in front of the agency that the person originally served. § 87406.3(b)(2). Such activity would be prohibited for the first year after leaving office or employment with the original agency.

Some cities have their own preexisting "revolving door" ordinances that regulate the lobbying activities of their former public officials. This state law expressly does not preempt those ordinances or prevent cities from adopting additional ordinances on the subject in the future, provided those ordinances are more restrictive than the state law. § 87406.3(c). Thus, the law merely sets a minimum standard applicable to all cities.

G. Laws Prohibiting Bribery

A number of state statutes prohibit bribery of public officials. Specifically, it is illegal to give or offer to give a bribe to a public official, or for a public official to ask for, receive, or agree to receive any bribe. Penal Code §§ 67, 68. Under a strict reading of these statutes, Penal Code Section 68 applies to bribery of a "ministerial officer, employee, or appointee," and Penal Code Section 67 applies only to bribery of an "executive officer in this state," but the courts have interpreted both statutes as having a broad scope applicable to public officials generally. *People v. Hallner*, 43 Cal. 2d 715, 717 (1954) (observing that Penal Code Section 67, despite its wording, is "all inclusive" and includes city officials, and that "[b]y the sixty-seventh section the offense defined is that of one who offers; by the sixty-eighth, that of one who receives a bribe"); *People v. Strohl*, 57 Cal. App. 3d 347, 360 (1976) ("Numerous California Supreme Court and appellate court decisions since 1954 have held that 'executive officers' of various levels

of local government, including the county level, as herein involved, come within [Penal Code] Section 67.").

The Legislature also expressly made bribery of council members and supervising officials a crime, as well as solicitation of bribes by council members and supervisors. Penal Code § 165. Another statute makes it a crime for anyone to attempt to bribe "any person who may be authorized by law to hear or determine any question or controversy." Penal Code § 92. Considered together, these statutes cover the spectrum of public officials.

The term "bribe" signifies anything of value or advantage, present or prospective, or any promise or undertaking to give any, asked, given, or accepted, with a corrupt intent to influence, unlawfully, the person to whom it is given, in his or her action, vote, or opinion, in any public or official capacity. Penal Code § 7(6). Note that under all of the bribery statutes, it is not only the actual giving or accepting of a bribe that is criminal; merely offering to give or receive a bribe constitutes a violation of law. See, e.g., *People v. Pic'I* (1982) 31 Cal. 3d 731, 739 (noting that a "meeting of the minds" is unnecessary for a bribery conviction).

A public officer forfeits his office if he requests, receives, or agrees to receive a bribe. Penal Code § 68. In addition, every officer convicted of any crime defined in the Penal Code sections pertaining to bribery and corruption is forever disqualified from holding any office in the state. Penal Code § 98.

Note also that bribery and soliciting bribery potentially violate not only the Penal Code, but also the conflict of interest statutes. For example, in *Terry v. Bender*, 143 Cal. App. 2d 198 (1956), a court of appeal held that a council member violated Government Code Section 1090 when he solicited and received a bribe from an attorney in exchange for the council member's vote to employ the attorney with the city. 143 Cal. App. 2d at 207 (observing that by accepting the bribe, the council member "had placed himself in a position of economic servitude" in violation of Section 1090). Because the bribe "restricted the free exercise of the discretion vested in him for the public good," there was an impermissible conflict of interest.

H. Nepotism

One other potential source of a conflict of interest is a governmental decision that affects a family member. If a public official's relative has an application before the government agency on which the public official serves, the public official would potentially have an improper incentive to approve the relative's application. Because the financial interests of a public official's spouse and dependent children (children under 18 years of age who are dependent financially on their parents) are attributed to the public official under the Political Reform Act and Section 1090, participation in decisions financially benefiting spouses and dependent children is limited. §§ 82030, 87103; *Thorpe v. Long Beach Community College Dist.*, 83 Cal. App. 4th 655 (2000) (holding that Section 1090 prohibited a community college district board from voting to approve the promotion of the spouse of a board member). If the approval did not require a decision by the legislative body, however, the public entity could still

potentially approve an application or make a decision if the related public official did not participate.

With respect to adult children and more extended family members, the Political Reform Act and Section 1090 would not automatically apply in the absence of some financial relationship between the public official and the adult child or extended family members.[36] Currently, state law only prohibits such "extended family" interests for the governing boards of school districts. Educ. Code § 35107(e). Under that statute, a school board member must abstain from participating in personnel matters that uniquely affect his or her relative. "Relative" is defined as an adult who is related to the official by blood or affinity within the third degree, or in an adoptive relationship within the third degree. There is no comparable statute for cities and counties, but some local governments have established similar restrictions through ordinances or policies.

The issue of familial relations comes up more frequently in the context of personnel decisions, as when a public entity prohibits the hiring of relatives of public officials or employees. Such anti-nepotism policies are generally upheld by the courts. For example, in *Parsons v. County of Del Norte*, 728 F. 2d 1234 (9th Cir. 1984), the Ninth Circuit upheld a county policy prohibiting spouses from working in the same department. The Ninth Circuit held that the policy did not violate the Equal Protection and Due Process clauses of the U.S. Constitution and was rationally related to a legitimate government interest: avoidance of conflicts of interest and favoritism in employee hiring, supervision and allocation of duties. See also *Kimura v. Roberts*, 89 Cal. App. 3d 871, 875 (1979) (upholding a policy prohibiting spouses from serving on both the city council and planning commission, reasoning that "the finding of the mayor and the city council that an actual or implied conflict of interest existed, is eminently rational, practical and legally sound").

Note, however, that state law prohibits the application of anti-nepotism rules to spouses in some circumstances. The Fair Employment and Housing Act prohibits an employer from making an employment decision based on whether an employee or applicant has a spouse presently employed, except in two specific situations:

- For business reasons of supervision, safety, security or morale, an employer may refuse to place one spouse under the direct supervision of the other spouse.

- For business reasons of supervision, security or morale, an employer may refuse to place both spouses in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples than for other persons.

2 C.C.R. § 11057(a) (emphasis added).

Accordingly, any anti-nepotism policy that a city or county adopts must not apply to the hiring of spouses, except in cases of direct supervision, where greater conflicts or hazards occur for married persons, or where a conflict of interest statute applies.

[36] *Davies* Advice Letter, No. I-90-329, 1990 WL 698051 (1990).

III. LAWS AND REGULATIONS AFFECTING RECEIPT OF GIFTS, HONORARIA AND LOANS

The PRA provisions and other conflict of interest laws discussed above do not prohibit a public official from having an interest in a business or real property. Instead, they merely limit the official's ability to participate in governmental decisions that would materially affect those interests.

There are additional restrictions in the PRA, however, with regard to certain gifts, honoraria and loans. The statute precludes local officials (including council members and planning commissioners) from receiving certain gifts, honoraria and loans. These prohibitions apply whether or not the source of the gift, honorarium or loan is or will ever be affected by a decision of the official's agency. This section outlines these prohibitions.

A. Limitations on Receipt of Gifts

1. General Gift Limitation

Government Code Section 89503(a) provides: "No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [$630]." (The gift limit amount has been adjusted in accordance with Regulation 18940.2.) Officials listed in Section 87200, in turn, include mayors, council members, planning commissioners, city managers, city attorneys, city treasurers, chief administrative officers and other public officials who manage public investments, and candidates for any of these offices.

A similar limitation prohibits a local agency employee designated in a local conflict of interest code from accepting gifts from a single source totaling more than $590 in value in any calendar year, if the gifts would be required to be reported on his or her statement of economic interests. § 89503(c).

2. Biennial Gift Limit Adjustment

The Act authorizes the FPPC to make an inflationary adjustment of the gift limitations set forth in Section 89503 every two years. § 89503(f). The most recent adjustment became effective on January 1, 2025, wherein the gift limit increased to $630. Regulation 18940.2. This figure will be further adjusted in future odd-numbered years.

3. Exceptions to Gifts

None of the following is a gift and none is subject to any limitation on gifts (Regulation 18942):

a. Informational Materials

Informational materials such as books, reports, calendars, audio and video recordings, scale models, maps, free or discounted admission to informational conferences or seminars, and on-site demonstrations, tours or inspections that are provided to convey information for the purpose of assisting the official in the performance of official duties are not considered gifts. The cost of transportation for on-site demonstrations, tours or inspections may fall into this exception in particular situations. Regulations 18942(a)(1), 18942.1.

b. Returned Gifts

Except for passes and tickets as provided for in Regulation 18946.1 that must be ultimately used or transferred to have value, a gift that is not used and that, within 30 days of receipt, is returned, donated, or for which reimbursement is paid pursuant to Regulation 18941, is not a gift. Regulation 18942(a)(2). First, an unused gift returned to the donor, the donor's agent, or the donor's intermediary for which the returning party does not receive anything of value in exchange for the returned payment, does not constitute a gift. Regulation 18941(c)(1). Next, an unused donation of a gift under this exception must be to either a 501(c)(3) charitable organization with which the official or a member of his or her family holds no position or to a government agency, without being claimed as a tax deduction, also does not constitute a gift. Regulation 18941(c)(2). Lastly, a gift fully reimbursed to the donor, agent, or intermediary from the recipient official is not a gift, but a partial reimbursement will result in a reduced gift amount. Regulation 18941(c)(3).

c. Family Gifts

A payment from an individual's family member is not considered a gift unless the donor is acting as an agent or intermediary for any other person. The family members included in this exception are a spouse or former spouse, child or step-child, parent, grandparent, grandchild, brother, sister, current or former parent-in-law, current or former brother-in-law, current or former sister-in-law, nephew, niece, aunt, uncle, grand nephew, grand niece, grand aunt, grand uncle, first cousin or first cousin once removed, or the current or former spouse of any such person other than a former in-law. Regulation 18942(a)(3).

d. Campaign Contributions

Campaign contributions that are reported in accordance with separate provisions of the Act are not considered gifts. Regulation 18942(a)(4).

e. Inherited Money or Property

Devises or inheritances of any kind are not considered gifts. Regulation 18942(a)(5).

f. Awards

A personalized plaque or trophy with an individual value of less than $250 is not a gift. Regulation 18942(a)(6).

g. Home Hospitality

The cost of home hospitality is not considered a gift unless any part of the cost is paid directly or reimbursed by another person, any person deducts any part of the cost as a business expense on a tax return, or the host has an understanding with someone else that any amount of compensation the host receives from that person includes a portion to be utilized to provide gifts of hospitality. Regulation 18942(a)(7). "Home hospitality" is defined as any benefit received by the official, and the official's spouse and family members when accompanying the official, which is provided by an individual with whom the official has a relationship, connection, or association unrelated to the official's position and the hospitality is provided as part of that relationship, connection, or association in the individual's home when the individual is present. Regulation 18942.2. Home hospitality includes entertainment, occasional overnight lodging, and any food, including food provided by other guests at the event and benefits received by the official when the official serves as the host.

A "home" includes a vacation home owned, rented, or leased by the individual for use as his or her residence, including in some cases a timeshare or a motor home or boat owned, rented, or leased by the individual for use as his or her residence. "Home" also includes any facility in which the individual has a right-to-use benefit by his or her home residency, such as a community clubhouse. Regulation 18942.2.

In determining where this exception is available, the official is to presume that the cost of the hospitality is paid by the host unless the host discloses to the official or it is clear from the surrounding circumstances that someone other than the host paid the cost or part of the cost of the hospitality. Regulation 18942(a)(7). The cost of providing hospitality must also not include any part of the value or rental cost of the home nor any depreciation value on the home where the hospitality is extended for the exception to apply. *Id.*

h. Presents on Personal or Family Occasions

Benefits commonly exchanged between an official and an individual, other than a lobbyist, on holidays, birthdays, or similar occasions are not gifts as long as the presents exchanged are not substantially disproportionate in value. For purposes of this exception, "benefits commonly exchanged" includes food, entertainment, and nominal benefits provided to guests at an event by an honoree or other individual, other than a lobbyist, hosting the event. Regulation 18942(a)(8)(A).

i. Reciprocal Exchanges

Reciprocal exchanges made in a social relationship between an official and another individual who is not a lobbyist and with whom the official participates in repeated social events are not gifts where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities. The repeated social events may include lunches, dinners, rounds of golf, attendance at entertainment or sporting events, or any other such event so long as the total value of payments received by the official within the year is not substantially disproportionate to the amount paid by the official. If the official receives much more than what he or she paid, the official has received a gift for the excess amount. This exception does not apply to any single payment that is equal to or greater than $630. Regulation 18942(a)(8)(B).

j. Leave Credits Donated to an Official

Leave credits, including vacation, sick leave, or compensatory time off, donated to an official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer are not gifts as long as they are available to all employees in the same job classification or position. This exception does not include donations of cash. Regulation 18942(a)(9).

k. Disaster Assistance

Payments received under a government agency program or a program established by a 501(c)(3) organization designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients are not gifts as long as such payments are available to members of the public regardless of official status. Regulation 18942(a)(10).

l. Admission when "Speech" Made

Payment of the official's admission by the organizer of an event is exempt from the gift limitations if the official makes a "speech" at the event. Regulation 18942(a)(11). This exemption applies if the official is "making a speech, participating on a panel, or making a substantive formal presentation at a seminar or similar event." Regulation 18950(b)(2). For the purpose of the exemption, the price of admission can include food and "nominal items" including things like pens, stress balls, note pads, etc. Regulation 18942(a)(11).

m. Campaign Travel

The payments made to an elected officer or candidate for his or her transportation, lodging, or food provided in connection with the official's campaign activities are exempt from the gift limitations, so long as the expenditures are reportable by the campaign committee in accordance with the provisions of Sections 84100, et seq., applicable federal law or the laws of the state in which the committee exists. Regulations 18942(a)(12), 18950.3.

n. Ticket for Ceremonial Role

A ticket which is provided to an official and one guest of the official for his or her admission to an event where the official performs a ceremonial role on behalf of the agency is not a gift, so long as the agency reports the ticket on its Form 802. The term "ceremonial role" means an act performed at an event by the official as a representative of the official's agency at the request of the holder of the event where, for a period of time, the focus of the event is the act performed by the official. Examples include throwing out the first pitch at a baseball game, cutting a ribbon at a library opening, or presenting a certificate or award. A local agency may adopt specific policies to either limit or expand the permissible ceremonial roles for an official in that city, the full list of which must be forwarded to the FPPC. Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event. Regulations 18942(a)(13), 18942.3.

o. Prize or Award in Bona Fide Contest or Competition

A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance is not a gift. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery. Regulation 18942(a)(14).

p. Weddings Benefits

Benefits received as a guest attending a wedding or civil union are not gifts if the benefits are substantially the same as the benefits received by the other guests attending the event. Regulation 18942(a)(15).

q. Bereavement Offerings

Bereavement offerings typically provided in memory of and at the time of the passing of a spouse, parent, child, or sibling or other relative of the official are not gifts. Regulation 18942(a)(16).

r. Acts of Neighborliness

A service performed as an act of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances is not a gift. Examples of such services include the loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away. Individuals need not be actual neighbors for this exception to apply. Regulation 18942(a)(17).

s. Bona Fide Date or Dating Relationship

Personal benefits commonly exchanged between people on a date or in a dating relationship are not gifts. However, such benefits are gifts if the individual providing the benefit to the official is a lobbyist or otherwise has particular interests in the official's role

in the agency within 12 months of the date. Even if the benefit is from such an individual, the gift is still not reportable or subject to limits but the aggregate value is subject to the conflict of interest provisions if the value is $630 or greater. Regulation 18942(a)(18)(A).

t. Acts of Human Compassion

Payments provided to an official or his or her family member by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity are not gifts. Payments provided to an official or his or her family member to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child are also not gifts. However, under this exception, the source of the donation must be an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment must be made without regard to official status under other circumstances in which it would be common to receive community outreach. In any case, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(B).

u. Best Friends Forever

A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency is not a gift. However, the individual providing the benefit to the official cannot be a lobbyist or otherwise have particular interests in the official's role in the agency within 12 months of the payment. Regulation 18942(a)(18)(C).

v. Catch-All

Any other payment that would otherwise meet the definition of gift is not a gift where the payment is made by an individual who is not a lobbyist and it is clear that the payment was made because of an existing personal or business relationship unrelated to the official's position. Additionally, there can be no evidence whatsoever at the time the payment is made that the official makes or participates in the type of governmental decisions that may have a foreseeable material financial effect on the individual who is the source of the payment. Regulation 18942(a)(19).

4. Gifts to an Agency

Regulation 18944 provides a narrow exception to the normal gift reporting requirements and value limitations for gifts made directly to a public agency. A payment made to a state or local government agency that is used for official agency business is not considered a gift or income to an individual public official who is the end recipient, even though the official receives an incidental personal benefit from the payment. As

such, the gift does not have to be reported by the individual and is not subject to the annual value limitation.

A payment shall be considered a gift to the public official's agency and not a gift to the public official if all of the following requirements are met: the payment must be used for official agency business; the agency head must determine and control the agency's use of the payment, including the selection of the official who will use the payment; and the agency must report the payment on a Form 801. The Form 801, which must be signed by the agency head and maintained as a public record in accordance with Government Code Section 81008, must include the following information:

- **Donor Information**: The reporting form requires not only the donor's name, but also his or her address, and must identify any other persons who contributed to the gift, as well as the amount each person contributed. If the donor is not an individual, the report must describe the business activity or nature of the entity giving the gift.

- **Description of Payment**: The form requires a description of the payment, the date it was received, the intended purpose and the amount of the payment or the actual or estimated fair market value of the goods or services provided, if the amount is unknown.

- **Recipient Information**: The form also requires that the agency specify the name, title, and department of the agency official who used the payment.

Regulation 18944(c)(3). For any quarter year period in which the payments received by the agency aggregate to $2,500 or more since the last filing, a local agency must submit a copy of the form or a detailed summary of the information to its filing officer within 30 days after the close of the quarter. Thereafter, the filing officer must post a copy of the form or the information in a "prominent fashion" on its website within 30 days after the close of the quarter. If the local agency does not maintain a website, the agency must send its Form 801 to the FPPC, which will post the document on its own website. Regulation 18944(d).

5. Gifts to an Official's Family

Regulation 18943 governs gifts to an official's or candidate's family. An official's "family member," includes an official's spouse or registered domestic partner, a dependent child, and an official's child. "Dependent child" means a child (including an adoptive child or stepchild) of a public official who is under 18 years old and whom the official is entitled to claim as a dependent on his or her federal tax return. Regulation 18229.1. An "official's child" (including an adoptive child or stepchild) means a child who meets all of the following criteria:

- The child is at least 18 but no more than 23 years old and is a full-time or part-time student;

- The child has the same principal residence as the official. For purposes of this provision, a place, located away from the official's residence, at which the child resides for the purpose of attending school is not the child's "principal place of residence"; and

- The child does not provide more than one-half of his or her own support.

a. Gifts to Both an Official and One or More Family Members

A single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. See "Wedding Gifts" section below for a particular exception to this rule.

b. Gifts Solely to Family Members

A gift given solely to a member of an official's family is a gift to the official, when there is no established working, social, or similar relationship between the donor and the official's family member that would suggest an appropriate association for making such a payment. A gift given to a member of an official's family is also a gift to the official if there is evidence to suggest the donor had a purpose to influence the official, such as when:

- The donor is a lobbyist, lobbying firm, lobbyist employer, or other similar person and is registered to lobby the official's state agency;

- The donor is involved in an action or decision before the local or state government agency in which the official will reasonably foreseeably participate, or in an action in which he or she has participated within the last 12 months; or

- The donor has a contract with the official's agency or the donor engages in a business that regularly seeks contracts with, or licenses, permits or other entitlements from, and the official may reasonably foreseeably make or participate in such a decision or has participated in such a decision within 12 months of the time the gift is made, unless the donor has less than 10 percent interest in the business contracting with or appearing before the agency. Regulation 18943(c).

6. Invitation-Only Events

When an official and one of his or her guests attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in Regulation 18946.4, the value received is the official's and the guest's pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event. Regulation 18946.2(b). A calculation of the pro-rata share means the total cost of the listed expenses above, divided by the number of acceptances or the number of attendees at the event. Any other specific benefit provided to the official

and guest at the event, such as golf green fees, is valued at fair market value. Regulation 18946.2(b).

a. Official or Ceremonial Functions

When an official performs an official or ceremonial function at an invitation-only event in which the official is invited to participate by the event's sponsor or organizer to perform an official or ceremonial function, the value received is the pro-rata cost of any meal provided to the official and guest, plus the value of any specific item that is presented to the official and his or her guest at the event. Regulation 18946.2(d).

b. Drop-In Visit

Except for an event sponsored by a lobbyist, lobbying firm, or lobbyist employer, if an official attends an invitation-only event and does not stay for any meal or entertainment otherwise provided at the event, receiving only minimal appetizers or drinks, the value of the gift received is the value of any specific item, other than food, that is presented to the official and his or her guest at the event. For purposes of this regulation, "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18946.2(e).

c. Lobbyists, Lobbying Firms, and Lobbyist Employers

Where an official attends an invitation-only event sponsored by a lobbyist, lobbying firm, or lobbyist employer, the value of the gift is the pro-rata share of the cost of the event. Regulation 18946.2(b), 18640. If the official notifies the lobbyist, lobbying firm, or lobbyist employer that the official attended the event but that he or she did not stay for any meal or entertainment, receiving only minimal appetizers and drinks, the value of the gift received is the value of any specific item (other than food) that is presented to the official and the official's guest at the event. Regulation 18640(b). Again, the term "entertainment" means a feature show or performance intended for an audience and does not include music provided for background ambiance. Regulation 18640.

7. Tickets to Political and Charitable Fundraisers

Regulation 18946.4 provides special rules for tickets provided to public officials to fundraisers for nonprofit and political organizations. Such tickets are not considered gifts to a public official if certain requirements are met. This exception applies only to two tickets provided to an official, and only if it is provided directly by the charity or campaign committee; additional tickets are treated as gifts. The requirements vary depending on whether the organization is a 501(c)(3) nonprofit, a non-501(c)(3) nonprofit, or a political organization.

a. Non-501(c)(3) Nonprofit Fundraiser

Regulation 18946.4(a) provides that a ticket to a fundraising event for a nonprofit, tax-exempt organization that is neither a political campaign committee nor a 501(c)(3) nonprofit shall be valued as follows:

- Where the ticket to the fundraiser clearly states that a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price that constitutes the donation, then the value of the gift is the face value of the ticket or admission reduced by the amount of the donation – i.e., the "nondeductible portion" of the price of admission.

- If there is no ticket or other official information provided by the organization indicating the value of the nondeductible portion of admission, the value of the gift is the pro-rata share of the cost of any food, catering service, entertainment, and any other item provided to the official that is available to the other guests. A calculation of the pro-rata share means the total cost of the listed expenses, divided by the number of acceptances or the number of attendees. Any other specific benefit provided to the official at the event, such as golf green fees, is valued at fair market value.

b. Fundraiser for a 501(c)(3) Religious, Charitable, Scientific, Literary or Educational Organization

Where the event is a fundraising event for an organization exempt from taxation under Internal Revenue Code Section 501(c)(3), such an organization may provide two tickets per event to an official, and the ticket shall have no value. Regulation 18946.4(b). Any additional tickets or admissions provided by the 501(c)(3) organization, any tickets provided to or controlled by the official, and any tickets not provided directly by the 501(c)(3) are valued as tickets from a non-501(c)(3) nonprofit. Regulation 18946.4(b).

c. Political Fundraiser

For the gift of a ticket, pass, or other admission privilege to a political fundraising event for a "campaign committee" or a comparable committee regulated under federal law or the laws of another state, the committee or candidate may provide two tickets per event to an official that shall be deemed to have no value. A "campaign committee" is any person or persons who directly or indirectly receives contributions totaling two thousand dollars ($2,000) or more in a calendar year (note: this was increased from $1,000 in 2015), makes independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year, or makes contributions totaling ten thousand dollars ($10,000) or more in a calendar year to or at the behest of candidates or committees. § 82013.

8. Tickets or Passes to Events Given to Officials by their Agency

a. Gift Exception

FPPC Regulation 18944.1 provides that a ticket or pass to an event or function provided to an official by his or her agency and distributed and used in accordance with a written policy adopted by the agency is not a gift under the Political Reform Act if: (1) the ticket or pass is not earmarked by an outside source for use by a specific agency official; (2) the agency determines, in its sole discretion, who uses the ticket or pass; (3) the distribution of the ticket or pass is reported on Form 802 as described below; and (4) the distribution of the ticket or pass by the agency is made in accordance with a written policy adopted by the agency that meets all of the requirements as described below. Regulation 18944.1(a).

- **Application**: FPPC Regulation 18944.1 applies only to the benefits the official receives from a ticket or pass to an event or function that are provided to all members of the public with the same class of ticket or pass, when the ticket or pass is provided by an agency to an official of the agency, or at the behest of an agency official. The regulation does not apply to: (1) an admission to an event or function in which the official performs a ceremonial role; or, (2) admission provided to a school, college or university district official, coach, athletic director or employee to attend an amateur event performed by students, which are neither gifts nor income. Regulation 18944.1(f).

b. Written Policy for Distribution of Tickets

- **Policy Requirements**: The distribution of tickets and passes described above must be made pursuant to a written policy duly adopted by the agency's legislative or governing body that must contain the following: (1) a provision setting forth the public purposes of the agency for which tickets or passes may be distributed; (2) a provision requiring that the distribution of any ticket or pass to, or at the behest of, an official accomplish a stated public purpose of the agency; (3) a provision prohibiting the transfer of any ticket received by an agency official, except to his or her immediate family or no more than one guest solely for their attendance at the event; and (4) a provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer, political appointee, or department head. Regulation 18944.1(b).

- **Public Purpose**: The agency's legislative or governing body must determine whether the distribution of tickets or passes serves a legitimate public purpose of the agency, consistent with state law. Tickets or passes given to officials (other than a member of the governing body, chief administrative officer, political appointee or department head) to support general employee morale, retention or to reward public service is deemed to have a public purpose. Regulation 18944.1(e).

- **Public Record**: The policy must be maintained as a public record, subject to inspection and copying. The agency must post the policy on the agency website within 30 days of adoption or amendment and send to the FPPC, by email, the agency's website link that displays the policy for posting on the FPPC's website. Regulation 18944.1(c).

c. Form 802 for Reporting Distribution of Tickets and Passes

Within 45 days of distributing a ticket or pass, the head of the agency must fill out and certify a Form 802 describing the distribution of tickets or passes to an official. The Form 802 requires: (1) the name of the official who received the ticket or pass, (2) a description and date of the event, (3) the fair value of each ticket or pass, (4) the number of tickets or passes distributed to the official, (5) if the ticket or pass is behested, the name of the official who behested the ticket, (6) if the official gave the ticket or pass to another person (limited to an immediate family member or no more than one guest), the name of that person, (7) the specific public purpose under which the distribution was made, and (8) a written inspection report of findings and recommendations by the official who received the ticket or pass if it was received for the oversight or inspection of facilities. This form must be maintained as a public record, subject to inspection and copying. The agency must post the form, or a summary of its contents, on its website and send the FPPC, by email, the agency's website link for posting on the FPPC's website. Regulation 18944.1(d).

d. Other Exceptions

- **Reimbursement**. The ticket or pass is not considered a gift if the official reimburses the agency for the ticket within 30 days of receipt. Regulation 18944.1(h).

- **Treated as Income**. The ticket or pass is not considered a gift if the official treats the ticket or pass as taxable income. Regulation 18944.1(g).

9. Gifts from a Government Agency to an Official in That Agency

A payment by an agency that provides food, beverage, entertainment, goods or services of more than a nominal value to an official in that agency is a gift to that official, unless the payment is a "lawful expenditure of public moneys." Regulation 18944.3.

Several commentators have questioned the need or usefulness of this regulation because a public agency is already prohibited from making a payment that is not a "lawful expenditure of public moneys." Boiled down, the regulation states that it is illegal for an agency to give a gift unless the gift is legal. The FPPC has not provided additional guidance on what constitutes a gift of public funds because such a determination is outside the interpretation of the PRA. Consequently, the FPPC will generally defer to the local agency's judgment on the matter unless and until a court

or prosecuting authority determines that a particular gift violates the laws regarding the use of public resources or does not serve or support a public purpose.[37]

10. Wedding Gifts

The value to an official of a wedding gift given to an official and his or her spouse or spouse-to-be is one-half of the gift's total value. Regulation 18946.3. This is an exception to the general rule, described above in "Gifts to an Official's Family," that a single gift to both an official and one or more members of the official's family is a gift to the official for the full value of the gift. The value of a wedding gift may exceed the gift limit, currently set at $630. Regulation 18942(b)(2).

11. Certain Gifts of Travel

Payments for travel for a public official are generally subject to the annual gift limit, unless the payment is otherwise exempt. FPPC regulations define a "payment for travel" as "any payment that provides transportation to an official from one location to another location as well as a payment for lodging and food connected with the travel." Regulation 18950(b).

For reporting purposes, payments of air travel are valued in accordance with FPPC regulation 18946.5, as follows. Air travel is valued as the price the carrier charges the public for the same class seat on the flight provided to the official in the case of a commercial flight. The value of all other air transportation is the value of the normal and usual charter fare or rental charge for a comparable airplane of comparable size, divided by the number of passengers aboard the flight.

Exceptions for certain gifts of travel are found in both the Act and the FPPC regulations, which are discussed below. Public officials should review these exceptions closely and consult with the agency's legal counsel before relying on them.

a. Travel Payments Related to Speeches that Serve a Governmental Purpose

Section 89506(a)(1) exempts from the gift limit any payments, advances, or reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if made in connection with a speech given by the official in the U.S. § 89506(a)(1); Regulation 18950(b). These types of payments for travel are not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(1); Regulation 18950(a).

b. Travel Payments Related to a Governmental Purpose Made by Government Agencies and Certain Non-Profits

Section 89506(a)(2) exempts from the gift limit any payments, advances, and reimbursements for travel that are reasonably related to a legislative or governmental purpose or issue of public policy if provided by a governmental agency, a 501(c)(3)

[37] *Wiley* Advice Letter, No. 1-08-196, 2000 WL 1395610.

nonprofit,[38] and a few other limited organizations/persons. § 89506(a)(2). These types of payments for travel are generally not subject to the gift limit, but they must still be reported on a public official's Form 700. § 89506(a)(2); Regulation 18950(a). However, Section 89506(f)(3) now clarifies that if a nonprofit is acting as an intermediary or agent of a donor, then the $630 gift limitation would apply and the original donor must be listed as the source of the gift to the official, as well as considered a financial interest for the purpose of conflicts analysis. § 89506(f)(3).

c. Travel for Education, Training, or Intra-Agency Purposes

Any payment for travel and per diem expenses received from a state, local, or federal agency is not a gift or income if used by the official for "education, training, or other inter-agency programs or purposes." Regulation 18950(c)(2).

d. Travel in a Vehicle or Plane Owned by Another Official or Agency

Regulation 18950(c)(3) provides that "transportation provided to an official in a vehicle or aircraft owned by another official or agency when each official is traveling to or from the same location for an event as a representative of their respective offices" does not constitute a "payment" and therefore does not count as a gift. Regulation 18950(c)(3).

e. Travel Made in Conjunction with Official Agency Business

Regulation 18950.1 provides an exception for travel payments that do not confer a personal benefit on an official, when made by sources other than local, state, or federal agencies, are for the purpose of facilitating the public's business, and are therefore not gifts or income because the payment is made for an official agency purpose in lieu of using agency funds. This exemption applies only to travel payments that meet all of the following requirements:

(1) The payment is made directly to or coordinated with the government employer and not made to the employee using the travel;

(2) The payment is used for official agency business;

(3) The government employer determines which official will use the payment for travel;

(4) The payment provides no personal benefit to the official who uses the payment;

[38] With respect to nonprofit organizations that regularly organize and host travel for elected officials and that make payments, advances, or reimbursements totaling more than $10,000 in a calendar year or $5,000 to an individual person, the Act now requires the nonprofits to disclose the names of donors responsible for funding the travel costs. § 89506(f). An organization "regularly organizes and hosts travel" if the organization's expenses for travel, study tours, or conferences constitutes more than one third of its total expenses. *Id.* In that case, the nonprofit must disclose the names of donors who contributed $1,000 or more to the nonprofit organization and who accompanied the elected official, either in person or through an agent, for any portion of the travel. § 89506(f).

(5) The duration of travel is limited to that necessary to accomplish the purposes for which the travel was provided; and

(6) The government employer reports the payment, as specified below.

The first requirement above – that the payment is made directly to or coordinated with the government employer – is satisfied if the payment is made directly to the government employer or by arranging with the government employer any payments for transportation and lodging that are made directly to the provider of those services. Food may be accepted for attendance at an event where food is provided as part of the admission to the event. All other payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).

The second requirement above – that the payment be used for official agency business – is satisfied under any of the following circumstances:

- The payment is made pursuant to a provision in a contract requiring the contracting party to pay any expenses associated with any required governmental travel resulting from the government agency's participation in the contract and the payment is used for that purpose;

- The payment is made for the travel expenses of an official for the purpose of performing a regulatory inspection or auditing function that the governmental employer is mandated to perform;

- The payment is made for the travel expenses of an official and the official is attending solely for purposes of providing training or educational information directly related to the governmental employer's functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members;

- The payment is made for the travel expenses of an official to an educational conference directly related to the governmental employer's functions or duties under the laws that it administers, the official is a named presenter at the conference, and the payment is made by the organizers of the event;

- The payment is made for the travel expenses of an official for the purpose of receiving training directly related to the official's job duties and the payment is provided by an organization that commonly provides such training;

- The payment is made for food provided to all attendees at a working group meeting in which the agency official participates as a representative of his or her agency in a working group meeting under his

or her officially assigned job duties and the agency is authorized to provide an official to attend the meeting; or

- The payment is for travel expenses that are required to attend a location to view an in place operation, structure, facility, or available product where the viewing would substantially enhance an official's knowledge and understanding in making an informed decision to enter into a contract regarding a similar operation, structure, facility or purchase of the product pursuant to the jurisdictional authority of the official's governmental employer. Regulation 18950.1(c).

The third requirement is satisfied if the governmental employer selects the official who will make use of the payment. However, if the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation. Regulation 18950.1(d).

The fourth requirement above – that the payment of travel does not provide a personal benefit to the official – is satisfied under Regulation 18950.1(e) if both of the following requirements are met:

- The travel is for purposes approved by the governmental employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his or her official duties; and

- Travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense.

The latter requirement does not apply to either of the following:

- Payment for food where food is provided as part of the admission to the event. Otherwise, any payments for food must be made to the government employer pursuant to the employer's per diem travel policy. Regulation 18950.1(b).

- Payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees. Regulation 18950.1(g).

The sixth requirement above – that the payment is reported – is satisfied by the agency reporting the payment on a quarterly basis on a form prescribed by the FPPC. Regulation 18950.1(f). All such forms must be maintained as a public record and subject to inspection and copying under Government Code Section 81008, and posted on the agency's website, if it has one.

f. Travel in Connection with Bona Fide Business

The FPPC regulations reiterate the general rule in Government Code Section 89506(d)(3), whereby a payment for transportation, lodging, or food, made in connection with a bona fide business, trade, or profession, and which satisfies the criteria for federal income tax deductions for business expenses specified in Internal Revenue Code Sections 162 and 274, is not an honorarium or gift, unless the sole or predominant activity of the business, trade, or profession is making speeches. Regulations 18932.3 and 18950.2.

g. Travel Paid from Campaign Funds

A payment made to an official who is a candidate to cover his or her transportation, lodging or food, in connection with campaign activities, is a contribution to the campaign committee of that official. Regulation 18950.3(a). A payment made to an official by or at the behest of a committee for the official's actual travel expenses (including food and lodging), or for other actual and allowable campaign expenses, is neither income nor a gift to the official so long as the expenses are reportable by the committee under the relevant sections of the Political Reform Act (Government Code Sections 84100 *et seq.*) or applicable federal law. Regulation 18950.3(b). Any other payment for travel from a committee to an official that is not covered by Regulation 18950.3(a) and (b) described above is considered income or a gift. Regulation 18950.3.

12. Lobbyists Arranging Gifts

A lobbyist or lobbying firm may not make gifts[39] to one person aggregating more than ten dollars ($10) in a calendar month, act as an agent or intermediary in the making of any gift, or arrange for the making of any gift by any other person. § 86203. It is likewise unlawful for any person to knowingly receive any such prohibited gift. § 86204.

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist does any of the following either directly or through an agent:

- Delivers a gift to the recipient.
- Acts as the representative of the donor, if the donor is not present at the occasion of a gift, excepting a situation where the lobbyist accompanies the recipient to an event where the donor will be present.
- Invites or sends an invitation to an intended recipient regarding the occasion of a gift.
- Solicits responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

[39] Government Code Section 86201 provides that a "gift" for purposes of this section is a "gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist."

- Is the donor's designated representative to receive responses from an intended recipient concerning the lobbyist's attendance or nonattendance at the occasion of a gift.

- Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

Regulation 18624. On the other hand, a lobbyist does not "arrange for the making of a gift" if the lobbyist, either directly or through an agent, solely recommends or provides information to the lobbyist's employer, "including information obtained from a third party for that purpose," regarding gifts to a public official. *Id.*

B. Prohibitions on Receipt of Honoraria

Government Code Section 89502 provides that an elected officer of a local government agency and any official listed in Section 87200 shall not accept an honorarium. This prohibition also applies to candidates for elective office in a local government agency. § 89502(b). In addition, employees designated in the agency's conflict of interest code are precluded from accepting any honorarium from any source, if the employee would be required to report the receipt of income or gifts from that source on the employee's statement of economic interests. Regulation 18730(b)(8). An "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. § 89501.

1. Exceptions to the Prohibition on Honoraria

a. Earned Income Exception

"Honorarium" does not include income earned for personal services if:

- The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting; and

- The services are customarily provided in connection with the business, trade, or profession.

Regulation 18932.

b. Informational Materials

"Honorarium" does not include informational materials such as books, calendars, videotapes, or free or discounted admission to educational conferences that are provided to assist the official in the performance of official duties. Regulation 18932.4(a).

c. Family Payments

"Honorarium" does not include a payment received from one's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin or the spouse of any such person. However, a payment from any such person is an honorarium if the donor is acting as an agent or intermediary for any person not listed in this paragraph. Regulation 18932.4(b).

d. Campaign Contributions

"Honorarium" does not include a campaign contribution that is required to be reported. Regulation 18932.4(c).

e. Personalized Plaque or Trophy

"Honorarium" does not include a personalized plaque or trophy with an individual value of less than $250. Regulation 18932.4(d).

f. Admission and Incidentals at Place of Speech

"Honorarium" does not include free admission, refreshments and similar non-cash nominal benefits provided to an official during the entire event at which the official gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity. Regulation 18932.4(e).

g. Incidentals at Private Conference

Likewise, "honorarium" does not include any of the following items, when provided to an individual who attends any public or private conference, convention, meeting, social event, meal, or like gathering without providing any substantive service:

- Benefits, other than cash, provided at the conference, convention, meeting, social event, meal, or gathering; or
- Free admission and food or beverages provided at the conference, convention, meeting, social event, meal, or gathering.

However, the foregoing may be reportable as gifts. Regulation 18932.4(f).

h. Travel that Is Exempt from Gifts

Any payment made for transportation, lodging, and subsistence that is exempt by the gift exceptions listed in Section 89506 and Regulation 18950 *et seq.* also does not constitute an honorarium. Regulation 18932.4(g).

C. Prohibitions on Receipt of Certain Types of Loans

1. Prohibition on Loans Exceeding $250 from Other City Officials, Employees, Consultants, and Contractors

Elected officials and other city officials specified in Section 87200, including council members, may not receive a personal loan that exceeds $250 at any given time from an officer, employee, member, or consultant of their city or any local government agency over which their city exercises direction and control. § 87460(a), (b). In addition, elected officials and other city officials specified in Section 87200 may not receive a personal loan that exceeds $250 at any given time from any individual or entity that has a contract with their city or any agency over which their city exercises direction and control. § 87460(c), (d).

2. Requirement for Loans of $500 or More from Other Persons and Entities to be in Writing

Elected local officials may not receive a personal loan of $500 or more unless the loan is made in writing and clearly states the terms of the loan. The loan document must include the names of the parties to the loan agreement, as well as the date, amount, interest rate, and term of the loan. The loan document must also include the date or dates when payments are due and the amount of the payments. § 87461(a).

3. Exceptions to Loan Limits and Documentation Requirements

The following loans are not subject to the limits and documentation requirements specified in paragraphs 1 and 2 above:

- Loans received from banks or other financial institutions, and retail or credit card transactions, made in the normal course of business on terms available to members of the public without regard to official status. Regulation 18730.

- Loans received by an elected officer's or candidate's campaign committee. § 87461(b)(1).

- Loans received from the elected or appointed official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person unless he or she is acting as an agent or intermediary for another person not covered by this exemption. § 87461(b)(2)

- Loans made, or offered in writing, prior to January 1, 1998. § 87461(b)(3)

4. Loans that Become Gifts are Subject to the Gift Prohibition

Under the following circumstances, as stated in Government Code Section 87462, a personal loan received by any public official (elected and other officials specified in Section 87200, as well as any other local government official or employee required to file a Statement of Economic Interests) may become a gift and subject to gift and reporting limitations:

- If the loan has a defined date or dates for repayment and has not been repaid, the loan will become a gift when the statute of limitations for filing an action for default has expired.

- If the loan has no defined date or dates for repayment, the loan will become a gift if it remains unpaid when one year has elapsed from the later of: the date the loan was made; the date the last payment of $100 or more was made on the loan; or the date upon which the official has made payments aggregating to less than $250 during the previous 12-month period. § 87462(a); Regulation 18730(b)(8.4).

5. Exceptions – Loans that Do Not Become Gifts

The following loans will not become gifts to an official:

- A loan made to an elected officer's or candidate's campaign committee.

- A loan on which the creditor has taken reasonable action to collect the balance due.

- A loan described above on which the creditor, based on reasonable business considerations, has not undertaken collection action. (However, except in a criminal action, the creditor has the burden of proving that the decision not to take collection action was based on reasonable business considerations.)

- A loan made to an official who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

- A loan that would not be considered a gift as outlined in paragraph 3 above (e.g., loans from family members). § 87462(b).

IV. PROHIBITION AGAINST MASS MAILINGS

The Political Reform Act also prohibits the sending of newsletters and other so-called "mass mailings" at public expense. §§ 89001, 89002.[40] A "mass mailing" is defined as the mailing or distribution at public expense of 200 or more items within a calendar month featuring the name, office, photograph or other reference to an elected officer of the agency. § 82041.5. The Government Code also prohibits a mass mailing from being sent within the 60 days preceding an election by or on behalf of a candidate whose name appears on the ballot. § 89003. The underlying intent of the Government Code provision and the implementing FPPC Regulation is to preclude elected officials from using public agency newsletters as indirect campaign flyers for themselves. The law and regulations are intended to clamp down on prior abuses of newsletters so that elected officials cannot use publicly funded newsletters to bolster their name or accomplishments while in office.

A. Test for Prohibited Mass Mailing

A mass mailing is prohibited if each of the following elements is present:

- It includes the delivery of a tangible item;
- It "features" an elected officer, or includes a reference to, an elected officer and is sent in cooperation with the elected officer;
- It is sent at public expense; and
- A quantity of more than 200 substantially similar items are sent in a single calendar month.

§ 89002. Most public agencies that publish newsletters attempt to avoid the prohibition by ensuring that the newsletter does not meet the second element of the test. Each of the four elements is discussed in numerical order below.

1. Delivery of Tangible Item

First, a court will determine whether any "item sent is delivered, by any means, to the recipient at the recipient's residence, place of employment or business, or post office box. The item delivered to the recipient must be a tangible item, such as a videotape, record, or button, or a written document." § 89002(a)(1). This means that if a city intends to deliver a written document, such as a city newsletter, by U.S. mail or by hand to residents or businesses, this element is satisfied.

[40] Section 89002 incorporates Regulation 18901 into the statutory language to clarify the circumstances when a mailing would be prohibited by the general rule in Section 89001 and to identify certain situations when the prohibition would not apply. The FPPC has repealed Regulation 18901 now that the statute includes the same text.

2. Features or Includes Reference to an Elected Official

The second part of the test is the most important and requires that the item sent either:

- Features an elected officer affiliated with the agency which produces or sends the mailing, or
- Includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer.

§ 89002(a)(2). The term "features an elected officer" is defined to mean that "the item mailed includes the elected officer's photograph or signature or singles out the elected officer by the manner of display of the elected officer's name or office in the layout of the document, such as by headlines, captions, type size, type face, or type color." § 89002(c)(2). And the term "elected officer affiliated with the agency" in this manner means "an elected officer who is a member, officer, or employee of the agency, or of a subunit thereof such as a committee, or who has supervisory control over the agency or appoints one or more members of the agency." § 89002(c)(1).

This means that if the written document includes the photograph of a council member, even if it just shows the council member cutting a ribbon on a civic project or giving out a plaque to a member of the community, this element would be satisfied. It also precludes articles about an elected city official or articles in which they are "singled out" for discussion or reference.

The other way this second part of the mass mailing test can be satisfied is if an elected city official's "name, office, photograph, or other reference" is included in a written document and the document, or any part of it "is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer." This restriction presents elected officials with a choice. If the elected official involves him or herself in the preparation of the document, then even the official's name must be excluded from appearing in the document pursuant to this second subpart. If, on the other hand, the elected official does not involve him or herself in the preparation of the document, his or her name may appear in the document, but not in a way that it is "featured" by way of headlines, captions, type size, type face, or type color.

3. Public Expense

The third part of the test is whether:

- Any of the costs of distribution are paid for with public money, or
- Costs of design, production, and printing exceeding $50 are paid with public money, and the design, production, or printing is done with the intent of sending the item other than as permitted by the statute.

§ 89002(a)(3). This part of the test precludes the city from either paying the costs of mailing a mass mailing, or paying more than $50 of the cost of having it produced if another person or entity pays for the cost of distributing the mailing.

4. More than 200 Copies of the Item

The fourth and final element of the test to determine whether a mass mailing is prohibited is whether "[m]ore than 200 substantially similar items are sent in a single calendar month, excluding any item sent in response to an unsolicited request…." § 89002(a)(4). This means that if more than 200 copies of the same written document, such as a city newsletter, are sent to the public in the same month, this element will be satisfied, with minor exceptions discussed below.

A city newsletter is particularly prone to violating the mass mailing proscriptions, especially the first, third and fourth elements of the test. The key to a lawful newsletter is to ensure that each issue of the newsletter fully avoids meeting the criteria of the second element of the test. This means that the newsletter cannot "feature" an elected city official and cannot include an elected official's name or reference if that official participates in the preparation of the newsletter, as discussed above. For example, many cities issue proclamations and awards at council meetings, and it is customary for an honoree to be photographed with the mayor. In order to comply with the mass mailing restrictions, cities may consider taking two photographs: one of the honoree shaking the mayor's hand, for distribution to non-city publications such as a local newspaper, and one of the honoree standing alone, for publication in the city newsletter.

B. Exceptions to the Mass Mailing Prohibition

The statute contains a list of certain types of documents that are exempt from the prohibition of mass mailings. The first of these documents is a letter on city letterhead where the elected official's name only appears in the letterhead along with a list of all other elected officers of the city and the letter does not contain other references to the elected official. § 89002(b)(1). Under this exemption, a non-elected official, such as the city manager, may send a letter on city letterhead at city expense to members of the community but an elected officer, such as the mayor, cannot do the same because the signature on the letter will be considered a separate reference to the elected official. If a letter signed by the mayor is to be sent to the community, a private individual or group would have to pay for the cost of producing and sending that letter.

Another exception allows a mailing that includes a single mention of the official's name if the mailing is an announcement of a meeting or event. If the announcement is for a meeting, the announcement must be one sent to the official's constituents, the subject of the meeting pertains to the official's duties, and the official attends the meeting. If the announcement is for an event, it must be an official agency event for which the agency provides the use of its facilities, staff or other financial support. § 89002(b)(9).

Other exemptions include press releases to the media, inter-agency communications, intra-agency communications, tax statements and bills, telephone directories, limited

meeting or event announcements, and meeting agendas. § 89002(b). All of these items are subject to their own specific limitations, as set forth in the statutory text.

V. EXPENDITURES TO SUPPORT OR DEFEAT A BALLOT MEASURE OR FOR CAMPAIGN ACTIVITY

A local government may not spend public funds to assist with the passage or defeat of an initiative or other ballot measure or to contribute to a campaign for or against a candidate. § 54964. Public monies may not be spent on commercials, announcements, banners or any other promotional materials. This is based on the theory that it would be unfair to voters with opposing views to use public funds in this way. The prohibition also serves to prevent elected officials from using government funds to promote themselves or their allies in office. *Stanson v. Mott*, 17 Cal. 3d 206, 217 (1976); *League of Women Voters v. County-Wide Criminal Justice Coordinating Comm'n*, 203 Cal. App. 3d 529 (1988). However, this section does not prohibit the expenditure of city funds to provide information to the public about the possible effects of the ballot measure on the activities, operations, or policies of the city, as long as these activities are otherwise allowed under California law, and the information is factual, accurate, fair, and impartial. § 54964(c).

In addition, local officials and staff are prohibited from using public resources for campaign activity or personal purposes. § 8314(a). The term "campaign activity" is defined, in relevant part, as "an activity constituting … an expenditure as defined in [Government Code] Section 82025," not including the incidental and minimal use of public resources. § 8314(b)(2). Section 82025 defines "expenditure," in relevant part, as "a payment … unless it is clear from the surrounding circumstances that it is not made for political purposes." § 82025(a). A payment is "made for political purposes" if it is "[f]or purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates." § 82025(b)(1).

An "expenditure" includes any payment made by any person (with some exceptions) that is used for communications that "expressly advocate" the nomination, election, or defeat of a clearly identified candidate or candidates." § 82025(c). A communication "expressly advocates" the nomination, election, or defeat of a candidate if it contains certain express words of advocacy, "or, within 60 days before an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election." § 82025(c)(2).

FPPC Regulation 18420.1 provides that a communication "unambiguously urges a particular result in an election" if: "When considering the style, tenor, and timing of the communication, it can be reasonably characterized as campaign material and is not a fair presentation of facts serving only an informational purpose." Regulation 18420.1(b)(2).

The leading California case setting forth the basic rule with respect to government involvement in political campaigns is *Stanson v. Mott*, 17 Cal. 3d 206 (1976). In *Stanson*, the California Supreme Court addressed the question of whether the State Director of Beaches and Parks was authorized to expend public funds in support of certain state bond measures for the enhancement of state and local recreational facilities. The court concluded that the Director lacked such authority and set forth the basic rule that "in the absence of clear and explicit legislative authorization, a public agency may not expend public funds to promote a partisan position in an election campaign." *Id.* at 209-210. Only impartial "informational" communications would be permissible, such as a fair presentation of the facts in response to a citizen's request for information.

The *Stanson* court also recognized that the line between improper "campaign" expenditures and proper "informational" activities is not always clear. "[T]he determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor, and timing of the publication; no hard and fast rule governs every case." *Id.* at 221-222. The *Stanson* test was reaffirmed by the California Supreme Court in *Vargas v. City of Salinas*, 46 Cal. 4th 1 (2009).

Prior to *Vargas*, courts attempting to interpret and apply *Stanson* used varying tests to determine the permissibility of expenditures. For example, in *California Common Cause v. Duffy*, an appellate court held that a local sheriff's use of public facilities and personnel to distribute postcards critical of then-Supreme Court Justice Rose Bird was "political" and not "informational" as permitted by *Stanson* because the cards presented only one side of Justice Bird's fitness to be retained in office. 200 Cal. App. 3d 730, 747-748 (1987). In another appellate decision, *Schroeder v. City Council of Irvine*, the court upheld Irvine's "Vote 2000" Program. 97 Cal. App. 4th 174 (2002). The program encouraged voter registration, without specifically advocating a particular position on any measure. Although the city had taken a public position in favor of the proposed ballot measure, the materials it distributed did not advocate any particular vote on the measure and rarely mentioned the measure at all. The *Schroeder* court held that the funds spent on the Vote 2000 Program would be political expenditures and unlawful under *Stanson* only if the communications expressly advocated, or taken as a whole unambiguously urged, the passage or defeat of the measure. Because the city presented a neutral position on "Measure F," at least in the campaign materials, the court upheld the program as valid.

However, in *Vargas v. City of Salinas*, the California Supreme Court decided that "express advocacy" is an insufficient standard. In *Vargas*, proponents of a local ballot initiative to repeal the city's utility users tax ("Measure O") sued the city alleging improper government expenditures, the court held that even if a communication does not expressly advocate for either side of an issue, a *Stanson* analysis must nonetheless be conducted to determine whether the activity was for informational or campaigning purposes based on its style, tenor, and timing. Although the court did not specifically refer to the *Schroeder* analysis in its opinion, the court clearly stated that the "express advocacy" standard does not meaningfully address potential constitutional problems arising from the use of public funds for campaign activities that were identified in

Stanson. Thus, local governments must look to *Vargas* rather than *Schroeder* for the proper standard to evaluate whether an expenditure is permissible.

A variety of factors led to the *Vargas* court's conclusion that the communications were informational, including the fact that the publications avoided argumentative or inflammatory rhetoric and did not urge citizens to vote in a particular manner. The challenged expenditures were made pursuant to general appropriations in the city's regular annual budget pertaining to the maintenance of the city's website, the publication of the city's regular quarterly newsletter, and the ordinary provision of information to the public regarding the city's operations. The Supreme Court found that in posting on the city's website the minutes of city council meetings relating to the council's action along with reports prepared by various municipal departments and presented by officials at city council meetings, the city engaged in informational rather than campaign activity. Similarly, the city did not engage in campaign activity in producing a one-page document listing the program reductions that the city council voted to implement should Measure O be approved, or in making copies of the document available to the public at the city clerk's office and public libraries. The court reasoned that viewed from the perspective of an objective observer, the document clearly constituted an informational statement that merely advised the public of specific plans that the city council voted to implement should Measure O be approved.

Finally, the court found that the city engaged in permissible informational activity by mailing to city residents the fall 2002 "City Round-Up" newsletter containing articles describing proposed reductions in city services. Although under some circumstances the mailing of material relating to a ballot measure to a large number of voters shortly before an upcoming election would constitute campaign activity, a number of factors supported the court's conclusion that the mailing of the newsletter constituted informational rather than campaign activity: it was a regular edition of the newsletter that was mailed to all city residents as a general practice, the style and tenor of the publication was entirely consistent with an ordinary municipal newsletter and readily distinguishable from traditional campaign material, and the article provided residents with important information about the tax in an objective and nonpartisan manner.

The Supreme Court illustrated the insufficiency of the "express advocacy" standard by suggesting that if the city were to post billboards throughout the city prior to an election stating, "IF MEASURE O IS APPROVED, SIX RECREATION CENTERS, THE MUNICIPAL POOL, AND TWO LIBRARIES WILL CLOSE," it would defy common sense to suggest that the city had not engaged in campaign activity even though such advertisements would not have violated the express advocacy standard. *Vargas v. City of Salinas*, 46 Cal. 4th 1, 32 (2009).

Vargas and *Stanson* reflect that local agencies must exercise caution when communicating to voters about local measures. Unfortunately, there is no hard and fast rule to assist public officials in distinguishing improper partisan campaign expenditures from permissible expenditures for "informational activities." Whether a communication is permissible will be based on a combination of these factors, and

public officials should therefore seek the advice of the city attorney on a case-by-case basis. Assistance may also be obtained from the FPPC.

Last, public officials should also be aware of a mass mailing rule that regulates communications pertaining to candidates and ballot measures. In 2009, the FPPC adopted a new regulation to prohibit government agencies from paying for mass mailings that expressly advocate or "unambiguously urge" a particular result in an election. Regulation 18901.1 prohibits a mailing if all of the following criteria are met:

- A delivery of a tangible item such as a written document, video tape, record, or button and is delivered to the recipient at his or her residence, place of employment or business, or post office box;

- The item sent expressly advocates or unambiguously urges a particular result in an election;

- The public agency (1) pays to distribute the item or (2) pays costs, exceeding $50, reasonably related to designing, producing, printing or formulating the content of the item including, but not limited to, payments for polling or research and payments for the salary, expenses, or fees of the agency's employees, agents, vendors, or consultants with the intention of sending the item; and

- More than 200 substantially similar items are sent during the course of the election including items sent during the qualification drive or in anticipation of an upcoming election.

A mailing "unambiguously urges a particular result in an election" if the communication can be reasonably characterized as campaign material or activity and is not a fair presentation of facts serving only an informational purpose when taking into account the style, tenor, and timing of the communication.

There are exceptions to this rule, and the following are not considered campaign related mass mailings: (1) an agency report providing the agency's internal evaluation of a measure sent to a member of the public upon the individual's request; (2) a written argument sent to a voter in the voter information pamphlet; and (3) a communication clearly and unambiguously authorized by law. Regulation 18901.1(b). Essentially, this regulation utilizes the standards articulated by the Supreme Court in the *Vargas* case and provides that communications that violate those standards are prohibited mass mailings.

VI. PROHIBITION ON GIFTS OF PUBLIC FUNDS

Article XVI, Section 6 of the California Constitution prohibits state and local governments from making gifts of public funds or property. A transfer of property without consideration is a gift. Civ. Code § 1146. However, where property is transferred for a "public purpose," it will not be considered a gift of public funds. There, "the benefit to the [government] from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom." 69 Ops. Cal. Att'y Gen. 168 (1986) (citing *California Employment Stabilization Comm'n v. Payne*, 31 Cal. 2d 210, 216 (1947); *Alameda County v. Janssen*, 16 Cal. 2d 276, 281 (1940)).

In determining whether a legislative body has made a gift of public funds, courts will look first at "whether the money is to be used for a public or a private purpose." *City of Oakland v. Garrison*, 194 Cal. 298, 302 (1941). "If it is for a public purpose within the jurisdiction of the appropriating board or body, it is not, generally speaking, to be regarded as a gift." *Id.* As the California Court of Appeal explained in *Board of Supervisors v. Dolan*, it is settled that if a public purpose is served by the expenditure of public funds, the constitutional prohibition is not violated "even though there may be incidental benefits to private persons." 45 Cal. App. 3d 237, 243 (1975). However, to avoid violating the constitutional prohibition, public financial assistance must be tailored or "directly related" to a public purpose. *California Housing Finance Authority v. Elliott*, 17 Cal. 3d 575 (1976). Thus, financial assistance that does not directly further the proffered public purpose may still be found to be unconstitutional.

Courts defer to the legislative body's determination of what constitutes a "public purpose." The concept of public purpose has been liberally construed by the courts, and a city council's determination of public purpose will be upheld unless it is totally arbitrary. *County of Alameda v. Carleson*, 5 Cal. 3d 730, 746 (1971). Where a city acts pursuant to or in furtherance of a state statute, courts will defer to the state legislature in determining whether a public purpose exists.

It is important to note that an unconstitutional gift of public funds is one of the few violations for which public officials may be personally liable and could be subject to potential criminal penalties. In *Stanson v. Mott*, 17 Cal. 3d 206 (1976), the California Supreme Court held that public officials may be held personally liable for illegal expenditures. The court concluded "that such public officials must use 'due care,' i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care." *Stanson*, 17 Cal. 3d at 226-27. If criminal penalties are sought, and the court finds a violation of Penal Code Section 424 (unauthorized appropriation or disbursement of public monies), the person could be subject to imprisonment for two to four years. The person could also be disqualified from holding any public office in the state.

Numerous considerations may be relevant to the determination of whether a public official has acted with due care. For example, a court may consider "whether the expenditures' impropriety was obvious or not, whether the official was alerted to the possible invalidity of the expenditure, or whether the official relied upon legal advice or on presumed validity of an existing legislative enactment or judicial decision in making the expenditure." *Id*. at 227.

VII. ETHICS TRAINING

State law requires a public official to take at least two hours of ethics training every two years if the local agency provides that official with any type of compensation, salary, or stipend or provides reimbursement for necessary and reasonable expenses incurred by that official in the performance of his or her official duties. § 53235(a). Ethics training is also required for any employee designated by the local agency to receive such training. § 53234(c). The recently adopted Assembly Bill 2631 ("AB 2631") requires the FPPC, in consultation with the Attorney General, to create, maintain, and make an ethics training course available to local agency officials. § 53235(c). Please seek advice from the city attorney regarding further details about ethics training.

VIII. CONCLUSION

More often than not, determining the application of conflicts of interest laws in particular circumstances requires complicated analysis. Because the consequences for a violation of these laws can be very serious, it is important that potential conflicts be identified as soon as possible to ensure that the appropriate analysis can be performed. To that end, we recommend that public agency staff prepare maps of council member residences and other real property interests (and those of other public officials, such as planning commissioners) so that such officials may be alerted to projects that are located within 500 and 1,000 feet of their real property interests. Even though the materiality standards for real property interests have changed over the years, this is still an important starting point for a conflicts analysis.

We encourage all public officials to keep in mind that it is the individual responsibility of each public official to determine whether he or she has a conflict in a particular decision. We also encourage officials and staff to seek advice from the city attorney when in doubt about a conflicts of interest issue. Because only a formal, written opinion from the FPPC can immunize someone from prosecution, we strongly encourage officials and staff to seek advice from the city attorney as early as possible, so that, if necessary, the public agency may request a formal opinion from the FPPC prior to any participation in a decision where a public official may have a conflict.

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1 Civic Center Circle
P.O. Box 1059
Brea, CA 92822

TEMECULA
41000 Main Street
Suite 316
Temecula, CA 92590

CENTRAL COAST
847 Monterey Street
Suite 206
San Luis Obispo, CA 93401

SACRAMENTO
2300 N Street
Suite 3
Sacramento, CA 95816

City of Davis
[Commission Name] Meeting Agenda
[meeting location & address]
[meeting day/date]
[meeting time]

*** Place for Special Notice (i.e. Special Location and/or Meeting Time Change) ***

Commission Members: [list commission members]

Council Liaisons: [list regular and alternate liaisons]

Staff: [staff liaison and other staff]

NOTE: The numerical order of items on this agenda is for convenience of reference; items may be taken out of order. A majority vote of the commission is required to begin consideration of each new item of business after ___ p.m. [set time to 2 hours **after commission start time**]

1. Call to Order & Roll Call

2. Approval of Agenda

3. Brief Announcements from Staff, Commissioners, and Council Liaisons (*Should not include lengthy discussion or Q&A on specific topics. Does not require public comment period.)*

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.

   IN PERSON PUBLIC COMMENTS:
   Speakers will be limited to no more than three minutes. Speakers will be asked to state their name for the record.

   WRITTEN PUBLIC COMMENTS:
   Submit written public comments to [commission email]. Emails are distributed to Commissioners, Council Liaisons and staff. To ensure the Commission has the opportunity to review information prior to the meeting, send emails by [2 hours before meeting time] on the meeting date.

5. Consent Calendar
   All matters listed under the Consent Calendar are considered routine and non-controversial, require no discussion, and are expected to have unanimous support. The Consent Calendar will be enacted by one motion. Commissioners may request items be removed from Consent Calendar for separate discussion and action.

A. (*For example*) __ Commission Minutes (*list each meeting date*)
Recommendation: Approve

B. (*For example*) Informational Report *(provide description)*
Recommendation: Receive

6. Regular Items
   A. (For example) Presentation … *(Name and title)*
   (*Description should inform the public of the essential nature of the item. Should be clear whether items are informational only, discussion, or action.)*
   Recommendation: Receive informational presentation.

   B. *(For example)* Discussion / Action Item … *(Name and title)*
   (*Description should provide sufficient notice of what will be considered or acted on.)*
   Recommendation: (*For example)* Provide feedback regarding…
   OR Support staff recommendation to…

7. As Needed: Subcommittee and Liaison Assignment Updates. This item is for brief updates on subcommittee work or reports from commission liaison(s) on meetings attended, if any. (*Item provides opportunity for updates. If there are no active subcommittees or liaison assignments, item can be deleted. Any substantive presentation or discussion should be agendized as a separate regular item.*)
   A. Subcommittee on xxx (list members)
   B. Liaison Report on Discussions or Activities Related to …(list members)

8. Long Range Calendar: Upcoming Meeting Dates and/or Potential Agenda Items

9. Adjournment.

In compliance with Brown Act regulations, this agenda was legally posted at least 72 hours in advance of the listed meeting date. Any supplemental materials 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/commission_link. 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 [STAFF LIAISON NAME AND CONTACT INFORMATION].

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
[Commission Name]
****Special Meeting Agenda****
[meeting location & address]
[meeting day/date]
[meeting time]

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4. Regular Items
   A. (For example) Discussion / Action Item … *(Name and title)*
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   Recommendation: (*For example)* Provide feedback regarding…
   OR Support staff recommendation to…

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[name of commission]
[20XX] CALENDAR

PURPOSE/FUNCTIONS

Purpose:

a) Function 1
b) Function 2
c) Function 3

TASKS/PROJECT

1. Task 1
2. Task 2
3. COUNCIL ASSIGNED: Task 3

ANNUAL UPDATES/REVIEWS													
Item	***Year***	***Jan***	***Feb***	***Mar***	***Apr***	***May***	***Jun***	***Jul***	***Aug***	***Sept***	***Oct***	***Nov***	***Dec***

SUBCOMMITTEES			
Name	**Members**	**Established**	**Timeline**
[name]	[last names]	[meeting date]	[estimated completion]
Description:			
Name	**Members**	**Established**	**Timeline**
Description:			
Name	**Members**	**Established**	**Timeline**
Description:			

[name of commission]
[20XX] CALENDAR

MEETING CALENDAR	
Meeting Date	**Item**
January	[item/topic 1]
	[item/topic 2]
	[item/topic 3]
February	
March	
April	
May	
June	
July	**RECESS**
August	
September	
October	
November	
December	
Potential Items with No Set Date	

DISCIPLINE PROCEDURES FOR COMMISSION/COMMITTEE MEMBERS

Purpose. To establish the types of actions for which a Commission/Committee member may be disciplined and the disciplinary measures that may be used.

Grounds for Discipline. Discipline may be taken against a Commission/Committee member for "good cause." Good cause is defined as any facts which, based upon relevant circumstances, may be reasonably relied upon in the exercise of discretion as a basis for disciplinary action. The following are set forth as examples only and shall not be construed as an exclusive list:

- Dishonesty
- Fraud
- Abusing position or status as a commission member to influence or incite others to illegal activities or for personal gain, advantages or perks
- Discourteous or abusive treatment of the public or other officers or staff
- Willful inattention or disregard for the direction and authority of a Chair or Vice Chair
- Behavior outside commission member expectations as defined in the Davis Commission Handbook that result in a hostile environment (belligerent, actively impeding commission activities, consistently monopolizing discussions with personal agenda, etc.)
- Inattention to or dereliction of duties which causes impediment to the function of a commission's purpose
- Appearing at a meeting with an impaired ability to contribute to the meeting

Levels of Discipline – Minor.

i. Oral Warning: An oral admonition to a member whose conduct or performance must be improved and which details the areas for improvement, the degree of improvement required, and notice that failure to improve will result in more serious disciplinary action. Least severe form of action. Staff Liaison will document all such activities in commission files.

ii. Written Reprimand: A formal written reprimand co-authored by the City Council Liaison and Staff Liaison pertaining to a member which summarizes previous related disciplinary action, if any, and which details a record of conduct or performance that is substantially below standards and which advises that continued conduct or performance at such levels may result in dismissal.

Levels of Discipline – Major.

i. Dismissal/Removal: The removal of a commission member when it has been determined that the member has been given every reasonable opportunity to reach the standards of conduct or performance required and has clearly failed to do so or has committed one or more offenses for which no other measure is appropriate. Any appointee may be removed at any time by a majority vote of the City Council.