City of Roseville
City Council/ Boards & Commissions Administrative Standards

CITY OF ROSEVILLE CALIFORNIA

July 16, 2020


Contents

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Purpose

This handbook shall serve as the administrative standards for all City of Roseville boards, commissions, and City Council members so that expectations and practices are clearly articulated to guide members in their actions and to provide a uniform frame for conduct. Informational appendices are included.

City overview

Form of government

The City of Roseville charter, adopted in 1954, establishes a council-manager form of municipal government. (Appendix I)

City Council

The five (5) member City Council, which is comprised of four (4) members and the mayor, enacts legislation, adopts budgets, and determines policy.

City Manager and department heads

The City Manager is appointed by the City Council. The City Manager is responsible for the day-to-day management of the city and supervises the organization through department heads. Department heads are appointed by and report directly to the City Manager.

City Attorney

The City Attorney provides legal advice and support to the City Council and boards and commissions on the legal propriety of proposed actions, prepares and/or reviews all ordinances, resolutions, contracts, and other documents, represents the city in civil litigation and acts as liaison to outside special counsel.

City Clerk

The City Clerk conducts elections to elect City Council members and recruits board and commission members, establishes and tracks compliance of mandatory training, maintains ~~all~~ city records and securities, prepares agendas and minutes for the City Council, and provides City Council action follow-up.

Staff

City staff, under the direction of the City Manager, is responsible for carrying out the policies and actions of the City Council and implementing the programs and services set out in the budget and identified in the City Council's annual goals.

Boards and Commissions

Boards ~~and~~ commissions are established to provide a method for citizen input and are ancillary to the City Council. All board ~~and~~ commission members shall serve without compensation. The City of Roseville has 14 boards and commissions: Board of Appeals, Charter Review ~~Commission~~*, Design Committee, Economic Development Advisory Committee, Grants Advisory Commission, Law & Regulation Committee, Library Board, Parks & Recreation Commission, Personnel Board, the Placer Mosquito Abatement & Vector Control District**, Planning Commission, Public Utilities Commission, Senior Commission, Transportation Commission, and Youth Sports Coalition.

**Charter Review ~~Commission~~ is a temporary commission that each decade reviews the entire city charter.*

***Placer Mosquito Abatement & Control District is comprised of five Placer County regional trustees. The City Council appoints one individual to serve as one of the five regional trustees.*

Membership

Eligibility

All members of boards and commissions shall be residents of the City at the time of their appointment and continuously during their term of office.

Individuals can only ~~be appointed to~~ serve on a single City of Roseville board or commission at a time. Notwithstanding the foregoing, individuals may serve concurrently on a single City of Roseville board or commission and a single City of Roseville committee.

Relatives (spouses, siblings, parents, domestic partners, co-habitants, and children) cannot serve on the same board or commission at the same time.

Incompatibility of office

An individual cannot hold two conflicting public offices. Be aware that acceptance of one governmental board appointment may result in the automatic forfeiture of another public seat.

Structure of terms of office

Members of the boards and commissions serve staggered terms of four years.* No member shall serve more than two consecutive terms ~~per board or commission.~~ In the event a person is appointed to fill an unexpired term the appointment to fill said unexpired term will be considered a partial term and will not be counted as one of the two full consecutive terms.

**Members of the Economic Development Advisory Committee serve two-year terms. There are no limitations on the number of consecutive terms a member of the Economic Development Advisory Committee may serve.*

If at the expiration of an eligible member's term the City Council has not yet appointed a replacement, the member may continue to serve on a month-to-month basis until a replacement is appointed.

Youth members

The City Council may appoint a high school student that is a resident of Roseville as a ~~voting or non-voting member of the Grants Advisory Commission, Library Board, Parks & Recreation Commission, and the Transportation Commission.~~ Such member shall serve only during his or her enrollment in high school and for a one-year term. Such member may be re-appointed for a second term. Youth members must be enrolled in high school during the entirety of their term. Youth members may not serve as chair or vice chair ~~of the board or commission.~~

Procedure policy

Procedure

If a vacancy on any board or commission occurs because current term ended, resignation, death, moving from the city, removal from incumbent's office, ineligibility for re-appointment, etc. the following procedure will be used:

- The City Clerk will advertise the vacancy in the city's legal newspaper and on the city's website, and will notify the Roseville Chamber of Commerce, and the Roseville Coalition of Neighborhood Associations of the vacancy;
- The City Clerk will establish a deadline for receiving applications;
- Applications received after the deadline will not be accepted;
- If fewer applications are received than twice the number of openings, the City Clerk may establish a new application deadline and the vacancy re-advertised as described in the first bullet point;
- The City Clerk will conduct video interviews of all applicants;
- Applications and video interviews will be provided to the City Council;
- If a new vacancy occurs after an application deadline and before an appointment is made, a new application process will not be re-advertised;
- City Council will cast their vote at a pre-designated meeting date via ballots;
- Ballots and applications of successful applicants are made part of the record and kept on file and made available for public review upon request

Position requirements

Oath of office

Before attending a board or commission meeting, every new member shall take the oath of office stating that he/she will faithfully discharge the duties of the board or commission to which appointed.

New member training

New board and commission members shall receive general and commission-specific training from the City Clerk Department and from the staff liaison before beginning their term.

Conflict of Interest Code

Under the Political Reform Act of 1974, all public agencies are required to adopt a Conflict of Interest Code. The code designates positions required to file Statement of Economic Interests, and assigns disclosure categories specifying the types of interests to be reported. The City of Roseville designates members of the Economic Development Advisory Committee, Grants Advisory Commission, Planning Commission, Public Utilities Commission, and Transportation Commission as required filers of an Assuming, Annual, and Leaving Form 700 Statement of Economic Interests. State law requires a fine be assessed for those who fail to file required Fair Political Practices Commission documents. If a board or commission member fails to file an Assuming Office Form 700 Statement of Economic Interests for more than thirty (30) days after the final filing date, the member will be disqualified from any participation in the meetings or other activities of the board or commission until the member both files the required Statement of Economic Interests and pays any fines associated with

the failure to file. If the member fails to file and/or pay the associated fine for more than sixty (60) days after the final filing date, the member shall be removed from the board or commission by City Council action.

Unclassified service

As provided by the charter, members of boards and commissions are considered unclassified employees and are therefore required to comply with City of Roseville Administrative Regulation 2.03 – HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION POLICY (Appendix II); and Roseville Administration Regulation 2.14 – ACCEPTANCE OF GIFTS AND GRATUITIES BY CITY EMPLOYEES. (Appendix III)

Ethics training

Assembly Bill 1234 imposes ethics training and compensation and reimbursement requirements on cities, counties, and special districts. For officials and board and commission members serving on or for a local agency, AB 1234 requires two (2) hours of ethics training within one year of appointment.* Thereafter, two (2) hours of ethics training every two years. Notification of this online training will be provided by the City Clerk Department. Failure to complete the online training shall result in removal from the board or commission.

**Youth Sports Coalition members are exempt from this requirement since appointments to the coalition are made by the youth sports member organizations and not the City Council.*

Sexual harassment training

Assembly Bill 1661 imposes sexual harassment prevention training requirements on cities, counties, and special districts for officials serving on or for a local agency. Notification of this online training will be provided by the City Clerk Department. Failure to complete the online training shall result in removal from the board or commission. In addition, the Department of Fair Employment and Housing requires all California employers to provide employees and volunteers the Department's sexual harassment pamphlet. (Appendix IV)

Social media

Statements and opinions using social media including, but not limited to Twitter, Facebook, Nextdoor, or professional networks like Linkedln, must remain personal and cannot be intended as representing the city's nor the board or commission's official position.

Dress code

Board and commission members are expected to portray a positive and professional image and are expected to wear clean and appropriate business attire:

Men: Shirt and tie or sweater and tie, slacks, collared shirts (sport coat or suit optional)

Women: Dress, suit ensemble (skirt or pant), skirt and blouse, dress slacks

Logo and materials

To reflect the official nature of the board or commission and to preserve consistency of the city brand, only the official city logo that contains the words "City of Roseville", shall be used on board and commission materials.

Attendance policy

It is the expectation that board and commission members attend all meetings. If a ~~board or commission~~ member is absent without excuse a total of 25% or more meetings in a rolling 12-month period, or more than one meeting in a rolling 12-month period if the board or commission meets quarterly, he or she shall forfeit the office. The secretary of each board or commission shall transmit ~~the absences~~ to the City Clerk. Excused absences from meetings may be for any of the following reasons:

- Illness of the member or the member's family member;
- Family emergency related to illness or injury;
- Business commitment, notice of which was provided to the chair and secretary in advance;
- Previously scheduled vacation, notice of which was provided to the chair and secretary in advance;
- Attendance at a funeral, religious service or ceremony, wedding, or other similarly significant event, notice of which was provided to the chair and secretary in advance.

Removal from office

Except when otherwise provided by law or the City of Roseville charter, ~~the~~ members of ~~the~~ boards and commissions of the city serve at the pleasure of the City Council, and may be removed by the City Council at any time with or without cause. A member's removal shall be by majority vote of the City Council.

Resignation

A member of a board or commission who wishes to resign prior to completing the member's term shall send a resignation letter to the City Clerk who shall notify the City Council and begin the recruitment process.

Safety information

- The dais is bullet resistant, the staff table is not;
- There are two panic buttons: One at the center of the dais and one in the media control room. The side-by-side buttons on the individual component should be pressed simultaneously ~~and~~ the signal ~~is then~~ sent to Roseville dispatch;
- An automated external defibrillator (AED) and a cardio pulmonary resuscitation (CPR) mask are mounted on the wall next to the media control room;
- In case of an emergency, the chair should adjourn the meeting and advise everyone to exit through the double doors and gather across the street.

Roles and responsibilities

Liaison

~~An employee of the city designated by a department head or the City Manager serves as liaison to the boards and commissions.~~ The liaison is appointed from the department which most nearly encompasses the board or commission's activities. ~~The~~ liaison provide~~s~~ procedural direction and serve~~s to help resolve questions of~~ the board or commission.

Secretary

~~An employee of the city designated by a department head or City Manager serves as secretary to the boards and commissions.~~ The secretary is appointed from the department which most nearly encompasses the board or commission's activities. The secretary assists in the board or commission's functions.

While the liaison and secretary roles are to assist the board or commission, the liaison, secretary and other staff are not employees of the board or commission. At all times, staff is strictly reportable to the department head and City Manager.

Chair

The chair and vice chair shall be selected by the board or commission members at a January or July meeting, or as soon thereafter as is practicable. Any voting member of the board or commission, except a youth member, can serve as chair and shall be seated at the next meeting. The length of ~~a~~ term for the chair and vice chair shall be one (1) year. However, there are no limitations on the number of consecutive terms the chair or vice chair may serve.

The chair is the presiding officer of the meeting. In the absence of the chair, the vice chair shall be the presiding officer of the meeting. In the absence of the vice chair, a temporary chair shall be selected from among the other members present, with priority given to seniority, and shall be the presiding officer of the meeting. Upon the arrival of the chair or vice chair, the temporary chair shall relinquish the chair immediately upon the conclusion of the item of business before the members.

The chair shall preserve order at all official meetings of the board or commission and shall decide all questions of order without debate, subject to advice from the City Attorney or City Attorney designee. The chair ~~may~~ not make any motion, but may second a motion. The presiding officer shall have all other rights and privileges of a board or commission member.

Additional role of the chair

- Attend City Council meetings as needed to represent the board or commission;
- Call a meeting to order and propose adjournment;
- Call for discussion and vote on motions;
- Clarify or request clarification of motions made by members;
- Rule whether motions are out of order;
- Interpret and enforce any meeting management bylaws or rules of procedure;
- Call members to order if they disregard rules of procedure or decorum for the meeting;
- Ensure that meetings are conducted in an efficient and productive manner.

Board and commission members

When the board or commission is in session, the members must preserve order and decorum. No member shall, by conversation or otherwise, delay or interrupt the proceedings or the peace of the board or commission, disturb any member while speaking, or refuse to obey the orders of the board or commission or its presiding officer.

A board or commission member is expected to:

- Attend scheduled meetings;
- Prepare in advance of meetings and be familiar with issues on the agenda;
- Contact the staff liaison if there are questions;

- ~~Fully~~ participate in meetings and carry out assignments;
- Use community members to obtain feedback on topics under consideration;
- Be considerate of fellow members and staff;
- Not direct staff;
- Not speak for the board or commission unless authorized by the board or commission;
- Not speak for the city unless authorized to do so by action of the City Council.

Limitations
Limited reports and comments at the end of the agenda are permissible as long as no action is taken.

Other persons
Persons addressing the board or commission shall step up to the podium and may, though not required, give their name for the record. All remarks shall be addressed to the body as a whole and not to any member thereof. No person, other than a member of the board or commission, staff liaison, or the person having the floor, shall be permitted to enter into any discussion without the permission of the presiding officer.

Any person making personal, impertinent or slanderous remarks, or who shall become boisterous while addressing the board or commission, shall, by the presiding officer, be barred from further audience before the board or commission during that meeting, unless permission to continue is granted by consensus of the board or commission. (Appendix V)

Spokesperson for group of persons
Whenever any group of persons wishes to address the board or commission on the same subject matter, it shall ~~be proper for~~ the presiding officer to request that a spokesperson be chosen by the group to address the board or commission and, in case additional matters are to be presented at the time by any member of said group, to limit the number of persons addressing the board or commission, so as to avoid unnecessary repetitions. The presiding officer may set a time limit for each side of the issue.

Meeting procedures

These meeting procedures shall pertain to all City of Roseville boards, commissions, committees, and the City Council. To the extent these procedures do not address an issue of parliamentary procedure for legislative body meetings, "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century" shall apply. (Appendix VI)

Other guiding documents
- The City of Roseville charter, Roseville Municipal Code, and state statutes will govern board and commission activities.
- Parliamentary Procedure dictates the body of rules, ethics, and customs governing meetings and other operations of clubs, organizations, legislative bodies, and deliberative assemblies.
- The Ralph M. Brown Act is an act of the California State Legislature, authored by Assembly member Ralph M. Brown and passed in 1953, that guarantees the public's right to attend and participate in meetings of local legislative bodies. (Appendix VII)

Meetings

Regular meetings
If a regular meeting date falls on a legal holiday, the meeting shall be held at the same hour, same day the following week or may be canceled.

Special meetings
Special meetings may be called by staff, the chair, or a quorum of voting members of the board or commission. Notice of the special meeting must be provided to the board or commission members at least twenty-four (24) hours in advance.

Business transacted at any special meeting shall be limited to the subjects recited in the notice of the special meeting.

Adjourned meetings
Any regular or special meeting may be adjourned (continued) to a specified time and place.

Recess of a meeting
A recess of a meeting may be called at the discretion of the presiding officer.

Closed session
Prior to holding a closed session, the City Council or Personnel Board shall disclose, in an open meeting, the item or items to be discussed in the closed session as they are listed on the agenda and may only consider those matters. The City Council or Personnel Board shall publicly report any action taken in closed session and the vote or abstention of every member present thereon as required by state law. No other board or commission shall conduct a closed session without the prior written consent of the City Attorney.

Quorum
A quorum is more than half (1/2 + 1), of all voting members of the entire board or commission. A quorum is based on the number of voting members of the full board or commission. In the absence of a quorum, a lesser number of members or the board or commission secretary must adjourn the meeting after fifteen (15) minutes have passed. In addition, if a quorum is lost during the meeting due to a departure of a member(s), a lesser number of members or the board or commission secretary must adjourn the meeting.

Meetings of a majority of members
A meeting is a congregation of a majority of the members of a board or commission at the same time and place to hear, discuss, deliberate, or take action on an issue in the subject matter jurisdiction of the board or commission. Even if no action is taken, a gathering may constitute a meeting. This includes informal gatherings and electronic communications, with or without public attendance or city sponsorship.

The following situations would not be considered a meeting if a majority of the board or commission members attend as long as: (1) matters within the board or commission's jurisdiction are not discussed, unless they are part of the program; and (2) program or events are open to the public:

- Open and publicized local public meeting;
- Open, noticed meeting of another body;
- Social or ceremonial event;
- Open, noticed meeting of a standing committee (can attend but cannot participate);
- Individual contacts or conversations among less than a majority of the members and a member of the public.

Although the above examples are generally not considered meetings, the City Attorney should be consulted prior to a majority of the board or commission members attending a "non-meeting." It is often advisable to notice the meeting or limit the attendance to less than a majority of the members.

Agenda ~~items~~

The order of business at all regular meetings shall be as follows:

- Call to Order
- Roll Call
- Pledge of Allegiance
- Public Comments
- Consent Calendar
- Requests / Presentations (and public hearings)
- Board Member / Commissioner / Staff Reports
- Adjournment

Call to Order

The presiding officer of the board or commission shall take the chair precisely at the hour appointed for the meeting, and shall call the meeting to order.

Roll Call

The roll of the members shall be called by the board or commission secretary and the names of those present shall be entered into the minutes.

Public Comments

Public Comments is intended to allow the public to address the board or commission on matters not listed on the agenda. Individual comments shall be limited to three (3) minutes and shall not exceed a total of 25 minutes, unless such time is extended by the presiding officer. The presiding officer shall not permit the public to address items which are listed elsewhere on the agenda or which are not within the subject matter jurisdiction of the board or commission. The board or commission shall not engage in debate regarding, or take any action on, any matter brought under Public Comments except to refer the matter to staff or to determine that the matter should be included on a future agenda for debate and action.

Consent Calendar

The Consent Calendar consists of items that are routine or noncontroversial in nature. The entire calendar is intended to be acted on in one motion on a roll call vote. Any member of the board or commission, staff, or the public may remove an item from the Consent Calendar for further discussion. Items removed from the Consent Calendar for further discussion

shall be discussed separately following the approval of the remaining items on the Consent Calendar. If a member of the board or commission has a question or wishes to remove an item from the Consent Calendar they should call the staff liaison to the board or commission no later than noon the day of the meeting. The staff liaison will determine if the item can be handled after the Consent Calendar or if it needs to be held over to the next meeting. The staff liaison shall so inform the presiding officer.

Requests / Presentations

Requests/Presentation items include presentations by staff or others, which may prompt discussion and/or action by the board or commission.

Public Hearings

Public hearing items include opening the public hearing, presentation by staff, presentation by applicant or appellant, and testimony from the public.

The order of business at public hearings shall be as follows:

- Open public hearing by presiding officer
- Presentation by staff
- Presentation by applicant (unless applicant is appellant)
- Presentation by appellant
- Open public comment by presiding officer
- Public comment
- Close public comment by presiding officer
- Rebuttal by appellant
- Rebuttal by applicant (unless applicant is appellant)
- Close public hearing by presiding officer
- City Council/board/commission deliberation
- City Council/board/commission action

Board Member / Commissioner / Staff Reports

Board Member / Commissioner / Staff Reports is designed for members of the board or commission and staff to report on individual assignments or to request that an item be placed on a future agenda. The latter requires a consensus of the board or commission. Individuals are allocated five (5) minutes apiece, for comments.

Adjournment

A motion to adjourn shall not be debatable. It shall be in order at any time, and;

- Cannot interrupt a speaker who has the floor;
- Cannot be amended;
- Must be seconded;
- Cannot be reconsidered;
- Must have a majority vote;
- A motion to adjourn "to another time" is debatable only as to the time to which the meeting is adjourned.

Order of business
The order of business may be changed at any time by the presiding officer or by consensus of the board or commission.

Voting

All business requiring approval of the board or commission shall be taken individually by an affirmative or negative vote and entered into the record, except that where the vote is unanimous it shall be necessary only to state so.

Majority vote
A majority vote is more than half of the votes actually cast. In the event a motion on an item fails to obtain a majority vote, the presiding officer at his or her discretion shall require another motion, continue the item, or refer the item to the City Council without recommendation if the item is before a board or commission. The number of motions that may be made on an item shall be at the discretion of the presiding officer.

Tie vote
If there is a tie vote on a motion, then the motion shall fail. In the event a motion on an item results in a tie vote, the presiding officer at his or her discretion shall require another motion, continue the item, or refer the item to the City Council without recommendation if the item is before a board or commission. The number of motions that may be made on an item shall be at the discretion of the presiding officer.

Abstention
An abstention occurs where a board or commission member, although qualified to vote on a motion chooses not to register his or her vote. An abstention constitutes no vote whatsoever. A roll-call vote shall be taken to note that the board or commission member was present but did not vote.

Conflict of interest
When a member has a conflict of interest, or the appearance of a conflict of interest, the member must:

- Publicly state the nature of the conflict;
- Step down from the dais and leave the room until consideration of the particular item is finished, unless the item is on the Consent Calendar;
- Not be counted toward achieving a quorum while the item is being discussed.

Official record

Minutes
The Minutes serve as a permanent record of the board or commission's official actions. The board or commission secretary shall be required to make a record only of such business as was actually passed upon by a vote of the board or commission, and shall not be required to record any remarks of board or commission members, or of any other person except at the special request of a member of the board or commission. Once approved by the board or commission, the original minutes are signed by the chair and secretary.

Minutes of the previous meeting shall be provided to the board or commission prior to each meeting. The minutes may be approved by majority vote even if one or more of the voting members were not present at the meeting to which the minutes relate.

Correction to Minutes

Members of boards and commissions are to review minutes and make corrections if needed so that the approved minutes accurately reflect the work of the group. Corrections are made at the meeting when the minutes are brought forward for adoption. Corrections require a motion, second, and a majority vote, and, if approved, are noted in the minutes of the current meeting. Any changes to the draft minutes approved by the board or commission will be reflected in the minutes for the meeting at which the corrections are made.

Recordings

A recording may be made of ~~the~~ board and commission meetings. Audio recordings of ~~the board and commission~~ meetings are to be kept for one (1) year, and video recordings are to be kept for three (3) years after which time the recordings shall be destroyed. Recordings are not the official minutes of the board and commission meetings.

Agenda notice requirements

Open Meeting Law

All of the meetings of the boards and commissions are subject to the Ralph M. Brown Act, requiring the entire deliberative process of a public body to be open to the public.

Meetings

A meeting is defined as the convening of members, whether in person or through electronic media or other communications, of the board or commission for the purpose of exercising the responsibility, authority, power or duties delegated to that body. A meeting is subject to the law whenever the board or commission meets for official purposes. When a quorum (1/2 + 1) of the members of a board or commission are present, it is considered a meeting for official purposes. A meeting does not include social or chance gatherings.

Further, any communication, including emails, social media posts, or other electronic communication or serial conversations between some or all members, could be considered a public meeting. Information or any type of communication to be shared by one member with other members of the board or commission shall be sent to the staff liaison who will forward it to all members of the board or commission.

Public notice

The Brown Act requires that all meetings of a governmental body be preceded by an official public notice:

- Regular meetings – when the meeting is held at a regular day, time, and location, the agenda must be posted 72 hours in advance of the meeting.
- Special meetings – when the meeting is held at a different time, different day, and/or different location than a regular meeting, then the agenda must be posted 24 hours in advance of the meeting.

- Adjourned meetings – regular and special meetings may be adjourned or continued to a future day if the business could not be completed at the original meeting. The time and date of the adjourned (continued) meeting must be designated and announced to the members of the public who are present at the time of adjournment, as well as recorded in the minutes.

~~Agendas~~

An agenda for each meeting of the board or commission is prepared by the board or commission secretary or liaison. The agenda outlines the topics or items of business that will be introduced, discussed, and acted upon at each meeting. The agenda shall also include the date, time, and location of a meeting.

Rights of the public

Pursuant to the Ralph M. Brown Act, the public must be allowed to:

- Attend, observe, and speak at meetings;
- Speak without being required to provide a name or address;
- Record the meeting with audio or video recorder and take photographs;
- Review agendas and other documents distributed to a majority of the board or commission, other than those exempt from disclosure;
- Request in writing that the agenda or agenda-related documents be mailed to them for a cost not to exceed the actual cost of providing the service;
- Obtain a copy of any audio or video (if it exists) of the meeting (there is no requirement to prepare a transcript) for a cost not to exceed the actual cost of providing the service;
- Speak to each item on the agenda and to items under the jurisdiction of the board or commission;
- Criticize or complain about processes or procedures.

Americans with Disabilities Act

All legislative meetings open to the public must comply with the Americans with Disabilities Act. If members of the board or commission or members of the public attending the meetings require special assistance to participate in a meeting, individuals must notify the staff liaison at least seventy-two (72) hours prior to the meeting.

Limited English proficiency

Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English are considered limited English proficient. If an individual appears before the board or commission and is limited English proficient and requests assistance, the individual should be provided a certified foreign language interpreter. Individuals requesting an interpreter must notify the staff liaison at least seventy-two (72) hours prior to the meeting. Pursuant to the Ralph M. Brown Act, individuals using an interpreter shall be provided at least twice the allotted time given to other members of the public.

Presentation material
If an individual plans to make a presentation on an agenda item and plans to use audio/visual materials, he or she must submit all audio/visual materials to the staff liaison at least seventy-two (72) hours prior to the meeting.

Composition, responsibilities, and meeting dates of the City of Roseville boards ~~and~~ commissions

Charter Review ~~Commission~~
Nine (9) members appointed by the City Council at least every ten (10) years

Responsibilities:
Reviews the ~~c~~harter and presents, or cause to be presented, to the City Council a written report recommending ~~those~~ amendments, if any, which should be made to the ~~c~~harter.

Meetings:
The Charter Review ~~Commission~~, once established, determines meeting day, time and location.

Design Committee
Three (3) members: two (2) members appointed by the City Council; one (1) member appointed by the Planning Commission; and one (1) alternate appointed by the Planning Commission

Responsibilities:
- Reviews design-related applications for multiple-residential, commercial, and industrial projects.
- Reviews proposed site plans, architecture, and landscaping for conformance with the city's general plan, specific plans, and community design guidelines.
- Reviews applications required by the city's sign ordinance.

Meetings:
The Design Committee meets the third Thursday of each month at 4:30 p.m. in the civic center meeting rooms 1 & 2, 311 Vernon Street.

**The chair of the committee shall be a current member of the Planning Commission. In the absence of the chair and vice chair of the committee, the alternate Planning Commissioner shall act as the presiding officer.*

Economic Development Advisory Committee
Seven (7) members appointed by the City Council: one (1) councilmember; one (1) Chamber of Commerce representative; and five (5) industry representatives

Responsibilities:
- Ensures goals of the Roseville Economic Development Strategy (Strategy) are being met.

- Provides guidance to staff and recommendations to the City Council on implementation of the Strategy and recommends changes or additions as necessary to reflect changing economic conditions or opportunities.
- Reviews annual economic development work program and budget and makes recommendations to the City Council regarding economic development work program and budget.
- Reports to the City Council at least annually on Strategy progress and effectiveness of the Strategy.
- Review programs which assist existing and prospective businesses.

Meetings:
The Economic Development Advisory Committee meets on the fourth Wednesday of January, April, July, and October at 1:30 p.m. in the civic center, 311 Vernon Street.

Grants Advisory Commission

Seven (7) members appointed by the City Council; additionally, the City Council may appoint a non-voting youth commissioner

Responsibilities:

- Reviews and recommends Citizens' Benefit Fund (Chapter 4.06) and Roseville Employees Annual Charitable Hearts ("REACH") fund and grant application processes and policies for grants to be approved by the City Council.
- Acts as a forum for public participation in review of Citizens' Benefit Fund and REACH grant applications.
- Annually reviews and makes recommendations on Citizens' Benefit Fund and REACH grant applications.
- Monitors approved grants and reviews annual reports for measurable outcomes.
- Recommends to the City Council the use of the interest earned by the city on the proceeds of the sale of the Roseville Community Hospital in the award of Citizens' Benefit Fund grants.

Meetings:
The Grants Advisory Commission meets the second Tuesday of each month at 5:30 p.m. except for the months of July and November, which begins at 7 p.m., in the council chambers, 311 Vernon Street.

Law and Regulation Committee

Two (2) council members, and one (1) alternate appointed by the City Council

Responsibilities:

- Requests, considers, and evaluates state and federal legislation, policies and regulations brought before the Committee and makes recommendations to the full City Council on those items.
- Provides input to staff regarding concerns about the effects a specific piece of legislation, policy or regulation might have on the community.
- Requests additional information from staff regarding legislation, policies, and regulations.

Meetings:
The Law and Regulation Committee meets the fourth Wednesday of each month at ~~5:30~~ p.m. in the council chambers, 311 Vernon Street. ~~(January, March, April, May, June, and August)~~

Library Board

Five (5) members appointed by the City Council; additionally, the City Council may appoint a voting youth member

Responsibilities:

- Participates in strategic and long-range planning for the city library system.
- Serves as community liaisons/advocates for library programs and services.
- Reviews policies and procedures as presented by city library staff.
- Represents the library at city-sponsored functions.
- Advises the City Council on important library efforts.

Meetings:
The Library Board meets the fourth Monday of odd-numbered months at 6 p.m. at various city libraries.

Local Sales Tax Citizens' Oversight Committee

Five (5) members appointed by the City Council.

Responsibilities:

- Annually, review revenue receipts and expenditures of the Transactions and Use Tax.
- Annually, review status of programs and services, funded wholly or partially with proceeds from the Transactions and Use Tax.
- Annually, prepare and present an independent report the City Council regarding the revenue and expenditures of the Transactions and Use Tax.

Meetings:
The Local Sales Tax Citizens' Oversight Committee meets two to three times per year, or as determined by the City Manager.

Parks and Recreation Commission

Seven (7) members appointed by the City Council; additionally, the City Council may appoint a voting youth commissioner.

Responsibilities:

- Reviews and makes recommendations on park projects, department operations, recreation programs, events and related issues.

Meetings:
The Parks and Recreation Commission meets the first Monday of each month at 6 p.m. in the council chambers, 311 Vernon Street.

Planning Commission

Seven (7) members appointed by the City Council

Responsibilities:

- Makes recommendations to the City Council on general plan, specific plan, zoning and other land use policy areas.
- Reviews and makes recommendations to the City Council on, and where appropriate, approves entitlements for compliance with the general plan, applicable specific plans, and other policy documents.
- Takes final action on major project permits, conditional use permits, tree permits, tentative subdivision maps, variances, and zoning interpretations.
- Determines the adequacy and consistency with the California Environmental Quality Act of environmental documentation associated with projects acted upon by the Planning Commission.
- Provides representation of the city at various conferences, before other agencies, etc.
- Provides commission members for service on special task forces/ committees, as needed.
- Provides a forum for public involvement for the items listed above.

Meetings:
The Planning Commission meets the second and fourth Thursdays of each month at 6:30 p.m. in the council chambers, 311 Vernon Street.

Public Utilities Commission

Seven (7) members appointed by the City Council

Responsibilities:

- Studies and advises the City Council regarding all utilities and enterprises owned or operated by the city, including but not limited to, electrical, water, wastewater, recycled water, solid waste, and stormwater.
- Advises the City Council regarding planning, rates, public information, and other matters relating to such enterprises.
- Hears citizen concerns relating to utility operation and/or rates.
- Conducts public meetings and public hearings for the purpose of reviewing agreements, proposed utility-related projects, and rates prior to making a recommendation to the City Council.

- Reviews California Environmental Quality Act and National Environmental Policy Act documents for public utility-related projects.
- Advises the City Council regarding the activities of joint powers agencies, if the City Council appoints a representative of the commission to sit as a participant on the board or commission of a joint powers agency of which the city is a member.
- Quarterly reviews the departments' progress reports given to the commission to determine the progress of each utility.
- Monitors new emerging technology and services, and when appropriate, makes recommendations to the City Council.
- Provides a forum for public involvement for the items listed above.

Meetings:
The Public Utilities Commission meets the fourth Tuesday of each month at 6 p.m. in the council chambers, 311 Vernon Street.

Senior Commission

Seven (7) members appointed by the City Council

Responsibilities:

- Investigate opportunities for outside revenue sources (grants) which are or which may be available to provide funding for senior programs and share findings with staff.
- Highlight senior programs, services, and resources to the community.
- Serve as a forum for commission members' and residents' expression of ideas, needs, and concerns, as they affect seniors, particularly in areas over which the City of Roseville has purview
- Respond to requests for recommendations to other commissions, staff, and City Council on programs, special events, policies and services.
- Serve as the eyes and ears in the community, bringing pertinent information to staff to help improve senior services.
- Serve as ambassadors throughout the community for the services provided by the City of Roseville.

Meetings:
The Senior Commission meets quarterly in February, May, August, and November on the second Wednesday of those months at 2:00 p.m. in the council chambers, 311 Vernon Street.

Transportation Commission

Seven (7) members appointed by the City Council; additionally, the City Council may appoint a voting youth commissioner

Responsibilities:

- Reviews and makes recommendations to the City Council on the general plan circulation element; the bicycle master plan, pedestrian master plan, short and long range transit plan, the capital improvement project plan; specific plan circulation plans; regional transportation plans, the public transit system; bikeway, pedestrian, transit, and roadway capital improvement projects and transportation systems management.
- Reviews and approves transportation systems management plans.
- Provides representation of the city at various conferences and before other agencies, as needed,
- Provides a forum for public involvement for the items listed above.

Meetings:
The Transportation Commission meets the third Tuesday of each month at 6 p.m. in the council chambers, 311 Vernon Street.

Supplemental meeting procedures

The meeting procedures of the Board of Appeals, Personnel Board, Youth Sports Coalition, and City Council are substantially unique and are therefore supplemented herein separately. In the event of a conflict between the Uniform Meeting Procedures and these Supplemental Meeting Procedures, the provisions of the Supplemental Meeting Procedures shall govern.

Board of Appeals

Ten to fifteen (10-15) members appointed by the City Council

Responsibilities:

- Serves as an advisory body to the City Council with respect to construction, building, code enforcement, or similar matters.
- Reviews matters as provided under the Uniform Building and Housing codes.
- Serves as a pool of hearing examiners for the purpose of formation of each ad hoc hearing examiner panel as provided herein.

Semi-annual meetings:
The Board of Appeals meets the second Tuesday of January and July, or as soon thereafter on a date and time as practicable, at 4:00 p.m. in the civic center, 311 Vernon Street.

Hearing panels
Three (3) members selected by the City Attorney or his or her designee from a pool consisting of the Board of Appeals members.

Responsibilities:

- Assembles at the request of the City Attorney and may hear violations of, and consider administrative penalties for, violations of the Roseville Municipal Code or conditions of approval associated with discretionary permits.

Hearing panel:
The City Attorney's office shall fix a reasonable time and date for the convening of the hearing panel to hear and adjudicate claims before it.

Selection of chair
The chair shall be randomly selected by the City Attorney prior to the start of the hearing and shall be announced at the start of the hearing.

Order of business
The order of business at all hearings shall be as follows:

- Call to Order
- Identification of Chair
- Pledge of Allegiance
- Public Comment
- Swear in
- Matters to be Heard
    - Staff report, complainant's statement
    - Appellant's Response
    - Rebuttals and Panel Questions
    - Panel Discussion
    - Panel Decision
- Adjournment

Conduct of business

Agenda of matters to be heard
An agenda of matters to be heard shall be prepared by the staff liaison and shall be made available a minimum of seventy-two (72) hours before the commencement of the hearing.

Presentation material
If an individual plans to use audio/visual materials, he or she must submit all audio/visual materials to the staff liaison no later than forty-eight (48) hours prior to the hearing.

Announcement of chair
The designation of the chair will be announced.

Call to order
The chair of the hearing panel shall call the meeting to order.

Swear in
All persons presenting evidence and/or testimony shall be sworn in.

Matters to be heard
The chair shall announce the matter to be heard and the panel may consider any competent and reasonable evidence. The standard of proof shall be based on the preponderance of the evidence. The panel may hear all evidence in its discretion. Formal rules of evidence shall not apply.

Staff report
The enforcement officer shall present a staff report. If applicable, the complainant may testify and present evidence. A copy of any staff report shall be provided to the responsible party/appellant at least five (5) days prior to the hearing. Additionally, a copy of the staff report shall be provided to the panel members at least five (5) days prior to the hearing.

Response, public testimony
The responsible party/appellant or the representative of the responsible party/appellant may respond to the staff report and/or the complainant. The response may include the presentation of testimony or evidence. Any materials provided by the responsible party/appellant to the City Attorney's office prior to the hearing shall also be provided to the panel members at least five (5) days before the hearing. Each side shall have five (5) minutes to make their initial presentation. If a translator is used, the person using the translator shall be provided at least ten (10) minutes for their initial presentation, which may be extended at the discretion of the chair.

Rebuttals and questions
The enforcement officer, the complainant, or the responsible party/appellant may offer rebuttal testimony. Each side shall have two (2) minutes for rebuttal. If a translator is used, the person using the translator shall be provided at least four (4) minutes for rebuttal, which may be extended at the discretion of the chair.

Rebuttal testimony is only to address relevant issues raised by the other party.

Panel discussion
Panel members may ask questions of city staff and of anyone who testified.

Decision

The chair shall close the matter and the panel may then consider the evidence. The hearing panel shall state its determination to the parties, based upon any required findings of fact.

If applicable, the chair will inform the responsible party/appellant of his/her appeal rights.

The panel shall proceed to the next matter to be heard until all such matters have been heard.

Appearances

Responsible party/appellant failure to appear

If the responsible party/appellant fails to appear for the hearing within 15 minutes after the hearing commences, the responsible party's/appellant's appeal will be automatically denied.

Complainant failure to appear

If the complainant fails to appear for the hearing within 15 minutes after the hearing commences, the responsible party's/appellant's appeal will be automatically granted.

Neither party appears

If both the responsible party/appellant and the complainant fail to appear for the hearing within 15 minutes after the hearing commences, the chair shall postpone the hearing pending rescheduling by the City Attorney. If both the responsible party/appellant and the complainant fail to appear for the rescheduled hearing within 15 minutes after the hearing commences, the responsible party's/appellant's appeal will be automatically granted.

Official record

Minutes of the hearing, set off in paragraphs clearly stating the actions, findings and determinations of the panel, shall be kept by the City Attorney or the City Attorney designee. Additionally, the record may include a recording of the actual hearing (either audio, video, or stenographical) as technology permits.

Personnel Board

Five (5) members appointed by the City Council

Responsibilities:

- Provides advice to the City Council on all matters relating to personnel administration in the city service.
- Investigates and takes action on complaints of an employee or group of employees alleging unfair treatment resulting from a management decision or lack of decision.
- Interprets the city's rules and regulations governing personnel practices or working conditions.
- Investigates and decides the claim of any person that their application for employment or promotion has not been processed and considered pursuant to the charter and the personnel rules.
- Hears and decides disciplinary, administrative and employment appeals from employees.
- Reviews and takes action on recommended changes to the personnel rules and regulations.

Meetings:
The Personnel Board meets the second Monday of each month at 1:30 p.m. in the civic center, 311 Vernon Street.

Disciplinary hearings

Legal advisor
An objective legal advisor to the board shall be provided in disciplinary hearings.

Pre-hearing procedures
Not later than seventy-two (72) hours prior to the hearing, the parties shall provide to each other and the board a list of witnesses to be called, and all exhibits to be presented, at the hearing.

Hearing procedures

A. The parties shall be notified of the time and place of the hearing.
    1. All hearings shall be conducted in closed session unless the employee requests a public hearing.
    2. The employee shall be entitled to appear personally, produce evidence, and be represented by counsel
    3. The complainant may also be represented by counsel.
    4. The board shall be guided, but shall not be bound by rules of evidence used in California courts. Informality in any such hearing shall not invalidate any order or decision made or approved by the board.
    5. The parties may present witnesses and cross-examine witnesses
B. The presiding officer shall rule on the admissibility of evidence and objections to the examination of witnesses during the hearing. The board may use the services of its counsel which may include assistance with ruling upon procedural questions, objections to evidence, and issues of law.
C. The appellant/employee shall personally attend the hearing. Unexcused failure of an appellant to appear at a hearing shall be deemed a withdrawal of the appeal.

The order of business at disciplinary hearings shall be as follows:

- Call to Order
- Roll Call
- Preliminary Statement (advisor to the Personnel Board)
- Documents / stipulations
- Witnesses Sworn
- Opening Statements
- Proof of the Charges
- Proof of the Defense
- Rebuttal (if any)
- Summation
- Board Deliberations

- Board action / open session
- Adjournment

Hearing decision
The board shall affirm, modify, or revoke the recommended personnel action. The board shall announce its decision in open session and thereafter issue a written decision within thirty (30) calendar days of adjournment of the hearing. The written decision shall contain findings of fact and the personnel action approved, if any. The findings may reiterate the language of the pleadings or simply refer to them. The decision of the board shall be certified to the director or designee who recommended the personnel action, and he/she shall enforce the decision. A copy of the decision shall be delivered to the appellant or his/her designated representative personally or by registered mail. The decision of the board shall be final.

Conduct of business

Closed sessions
Whether a disciplinary hearing is open or closed to the public as permitted by the Brown Act, during the board deliberation concerning its decision, only the board members and the board's legal advisor shall be present.

At least one week before the date set for the disciplinary hearing, an employee appealing a disciplinary action must notify the human resources director whether the appeal hearing shall be an open or closed session.

Witnesses excluded
Whenever the board is conducting a disciplinary hearing, either the employee, the city, or the board may request that all witnesses be excluded and the chair shall order the exclusion. Notwithstanding the preceding sentence, neither the disciplined employee nor the city's designated representative shall be excluded, even though one or both may be witnesses in the hearing.

Appeals
Overturning the decision of the human resources director requires an affirmative vote of a majority of the board members present and qualified to act. If there is no majority vote to grant the appeal, the appeal is denied.

Official record
The minutes of the board for closed sessions shall be filed separately and secured for privacy purposes.

Recording of meetings
A professional transcriber/recorder will record closed disciplinary hearings.

Youth Sports Coalition

Definitions
Allocation policy - City of Roseville Parks and Recreation Department Youth Athletic Field/ Facility Use and Allocation Policy which includes specifics on youth sports member criteria, fees and member benefits.

Representative – Any board member of a youth sports member organization that qualifies for membership under the Allocation Policy. Each youth sports member organization may have one (1) representative attend and participate in meetings.

Coalition – Roseville Youth Sports Coalition, an ad hoc advisory committee comprised of representatives from youth sports member organizations and the commission.

Coalition member – Appointed commission representatives or youth sports member organization representatives.

Commission – City of Roseville Parks and Recreation Commission.

Council – City of Roseville City Council.

Department – City of Roseville Parks, Recreation & Libraries Department.

Director – Director of the Parks, Recreation & Libraries Department, or his or her designee.

Rules

The coalition shall function as an advisory committee to the commission. The coalition is created with the intent of establishing an open forum for communication and cooperation between the coalition, commission, the department, and the public. The coalition has no authority, either expressed or implied, to commit city resources or funds, allocate the use of any athletic fields, facilities, concession stands, or other city property to any organization or individual or to make improvements to city-owned parks, fields and/or facilities.

Responsibilities

- Recommends ways to create ongoing partnerships with the department, participating school districts, and nonprofit groups to maximize use of recreation facilities;
- Recommends improvements to existing facilities;
- Assists the department in planning future sports facilities;
- Advances the interests of the Roseville community in youth sports;
- Encourages participation in the youth sports offered by coalition members and the public in general, and to promote youth sports in the community;
- Applies for grant opportunities or otherwise conduct fundraising activities for specific projects.

Per participant fees will be collected on an annual basis from each sport league. Fees will be used for league CIP projects and field maintenance costs. The distribution of fees collected and disbursement is listed in the Field Allocation and Rental Use document.

Notwithstanding the foregoing and as previously stated, the coalition has no authority, either expressed or implied, to commit city resources or funds from whatever source, and no authority, either express of implied, to allocate the use of any athletic fields, facilities, concession stands or other city property to any organization or individual, or to make improvements to city-owned parks, fields and/or facilities.

The activities of the coalition shall not consist of carrying on propaganda or otherwise attempting to influence legislation, and the coalition as a collective body shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

The coalition is nonprofit, nonpartisan, and nonsectarian.

Membership

Commission appointments

The commission shall appoint three (3) commission members to serve on the coalition. The commission shall appoint one (1) of these three members to serve as the coalition chairperson and one (1) of these three members to serve as the vice chairperson.

Youth sports organization eligibility

The Allocation Policy outlines the specific eligibility requirements for youth sports member organizations. Youth sports organizations qualifying for membership under the Allocation Policy will be invited by the Department to join the Coalition.

In addition to satisfaction of the eligibility requirements set forth in the Allocation Policy, the youth sports member organizations must comply with the following additional requirements:

- The organization is an existing, functioning entity with its own governing body (Board of Directors or Trustees) and rules and regulations (Bylaws).
- The organization is recognized by and affiliated with a national, state or regional government body (i.e., Little League Baseball, Amateur Softball Association, and American Youth Soccer Association).
- The organization is recognized by the City of Roseville.
- The organization's primary function is to provide an opportunity for sports involvement for youth in the Roseville area.
- Organizations must provide recreation programs which complement existing programs of the Department.
- Pursuant to California state law, youth member organizations groups may not discriminate against any person on the basis of sex or gender or other protected basis in the operation, conduct, or administration of community youth programs.
- The organization is a registered nonprofit organization. A "nonprofit organization" as used in this section shall refer to an organization which is not conducted or operated for profit and no part of any funds flowing to the organization shall serve to benefit any member or individual. Each organization shall provide proof of its tax-exempt status. Acceptable proof of nonprofit status will include:
- An Exemption Determination Letter from the California Secretary of State must be provided. All supporting documents must be submitted with Letter of Determination.
- A Determination Letter from the Internal Revenue Service (IRS) of recognition of their Section 501(c)(3) exempt status. (An organization that submits an application to the IRS and has it approved, must make a copy of the application and supporting documents, as well as any letter issued by the IRS, available for public inspection.)
- File with the Department at least fourteen (14) days prior to the start of each season:
    - A report on the function of organization.
    - A list of the governing body naming the office held, term of office, address, phone number and email address of each.

- A master schedule of all games to be played to include dates, times, fields and teams participating and board of directors and general membership meeting dates, times and locations if requested.
- A single roster per team with the individual participant name, age, home address (including zip code) and phone number, team name, age bracket of the team, and the coach's name, address and phone number.
- Proof of the policies of insurance and limits of coverage required by the Allocation Policy, including, but not limited to all required certificates of insurance, endorsements and/or renewals.

In the event additional insurance is required based on the nature of the activity, the submission must include evidence of such additional, required insurance coverage. Failure to comply with all requirements relating to insurance will terminate Coalition status in addition to other remedies set forth in the Allocation Policy.

The Coalition reserves the right to review submitted paperwork.

Organizations failing to comply with the policies may be required to forfeit the use of athletic fields/facilities until they are in compliance, in addition to other penalties outlined in the Allocation Policy.

Youth sports organization representatives

All board members of each youth sports member organizations are eligible to serve on the Coalition as a Representative. However, only one Representative can attend and participate in a meeting at a time.

Each youth sports member organization shall provide the following information to the Department: each board member's name, e-mail address and phone number. Organizations must keep this information current at all times.

Term of office

Representatives may serve on the Coalition as long as they remain members on their youth sports member organization's board.

Fees

Participating youth sports organizations must pay the per-participant per-season fees as set forth in the Allocation Policy, as amended from time to time, to maintain eligibility for Coalition membership.

Member resignation/termination and disciplinary actions

Any representative or youth sports member organization resigning their/its position from the Coalition shall do so in writing to the Department. An appointed Commission member may resign his/her position from the Coalition in writing to the Department and the Commission. The resignation of a youth sports member organization shall not become effective until accepted by a majority vote of the Coalition.

Any youth sports member organization shall forfeit membership by non-payment of fees after sixty (60) days from the date due, unless otherwise extended for good cause. Membership will only resume upon the payment in full of outstanding fees.

Any representative or youth sports member organization may be removed by the coalition, at a regularly scheduled meeting thereof, for conduct unbecoming a member or prejudicial to the aims or repute of the coalition, after receipt of written notice. Any appeal of a decision of the coalition will be heard by the Appeal Committee. The Appeal Committee shall

consist of the coalition chair, one city staff member designated by the department, and one additional coalition representative at large designated by the coalition membership. The decision of the appeal committee shall be final.

A youth sports member organization may change its representatives at its discretion as long as such representatives are members of the organization's board. A written notice identifying the new representatives must be submitted to the department at least five (5) days prior to a coalition meeting.

In the event of the resignation or termination of a coalition member, the coalition or the department shall request that the appointing youth sports organization or commission fill such vacancy.

Meetings

The coalition shall meet at least quarterly (once during each quarter of the calendar year). The time and place shall be fixed by the director and shall be held within the City of Roseville city limits.

Agenda items

Agenda items for the coalition appear as the result of a written request submitted to the department at least seven (7) working days prior to the scheduled meeting and must be approved by the department or coalition chair.

Video tape recordings

A video tape recording shall not be made of coalition meetings unless requested in advance by the coalition chair.

Voting

Each coalition member shall have one (1) vote. Voting by proxy will not be permitted. A member vote is cast by the representative attending the meeting. In the case of appointed commission members, the individual member must be present to cast a vote.

Attendance policy

A youth sports member organization must be represented by its representative at all regularly scheduled meetings. A youth sports member organization will be declared delinquent if that organization fails to be represented or excused from three (3) consecutive meetings of the coalition. If declared delinquent, a member organization may lose all member privileges. After two (2) consecutive meetings with no representation, the member organization shall be notified by mail at the organization's address of record and asked to appoint a new representative and alternate. Any member organization unrepresented at three (3) consecutive meetings (unless excused by majority vote), shall be automatically removed. Membership will resume when new representatives are identified.

Amendments

Amendments to the meeting procedures shall be adopted by the City Council and shall become effective immediately unless designated as effective at a later date. Amendments may occur only at a public meeting. The coalition may propose amendments to these meeting procedures by simple majority vote of the membership. Any such proposed amendment shall then be sent to the commission for consideration and recommendation to the City Council.

Dissolution
The City Council may dissolve the coalition at a public meeting should the City Council determine the coalition no longer meets the needs of the city. In the event of dissolution, the coalition will continue to meet for up to six (6) months following council's decision to dissolve the coalition in order to finalize a plan for disposition of any remaining funds. The coalition's plan for disposition of any remaining funds shall require City Council approval.

City Council

Elective officers
~~The City Council shall constitute the legislative and governing body of the city and shall have authority, except as otherwise provided by the charter, to exercise all powers of the city, and to adopt such ordinances and resolutions as may be proper in the exercise thereof. The electors of the city shall elect a council of five (5) members, at large, for a four (4) year term of office. Two and three councilmembers are elected alternately at the general municipal election in November of even-numbered years. No councilmember shall serve more than two (2) consecutive four (4) year terms. Upon receipt of a certified statement of the results of the election, the City Council shall be sworn in and assume office. The City Council shall hold its first meeting at that time. The councilmember receiving the highest number of votes in the latest election is seated as vice mayor for the first two years of a four-year term, and as mayor for the final two years of the term. The mayor's term of office shall commence upon assumption of office and continue until the assumption of their successor following the next general municipal election.~~

Powers and duties of mayor
The mayor shall be the official head of the city government for purposes of ceremony. The mayor shall serve as the presiding officer at meetings of the City Council and shall decide all questions of order without debate, subject to advice from the City Attorney or the City Attorney designee. The mayor may not make any motion, but may second a motion. The mayor shall have all other rights and privileges of a councilmember.

Vice mayor
In the temporary absence or disability of the mayor, the vice mayor shall exercise the duties and prerogatives of the mayor. The mayor shall, whenever possible, notify the City Clerk of the mayor's intended absence from the city. In the event both the mayor and vice mayor are unable to perform their duties, the City Council may appoint one of its members to act only as chair of a meeting.

Compensation
Each member of the City Council shall receive a salary that shall be six hundred dollars ($600) per month for each councilmember and the mayor shall receive an additional fifty dollars ($50) per month. Councilmembers may, upon order of the City Council, be reimbursed for reasonable and necessary expenses actually incurred in the service of the city. Confirmation of reimbursement should be received before expenditures are made.

Auxiliary Positions
Councilmembers are expected to attend many meetings outside of the city and may or may not be compensated for their attendance. Every two years the mayor is responsible for bringing recommendations forward for the distribution of these councilmember

responsibilities to serve on regional and local agencies, boards, commissions, committees, and joint power authorities. If unable to attend, councilmembers must ensure their alternates can attend to ensure a quorum of members is present.

Councilmember vacancies

~~Any vacancy on the City Council shall be filled by a majority vote of the remaining councilmembers within thirty (30) days after the vacancy occurs. If the City Council fails, for any reason, to fill such vacancy within said thirty (30) day period, it shall forthwith call an election for the earliest possible date to fill such vacancy. A person appointed by the City Council to fill a vacancy shall hold office until the general municipal election and until a successor qualifies. The candidates receiving the most votes shall serve the longer, if any, of the unexpired terms, and in case of ties, the terms shall be fixed by lot. A councilmember elected to fill a vacancy shall hold office for the remainder of the unexpired term. The appointment to fill said unexpired term will be considered a partial term and will not be counted as one of the two full consecutive terms.~~

Regular meetings

~~The City Council shall hold regular meetings on the first and third Wednesday of each month; provided that, if a regular meeting date falls on a legal holiday, the meeting shall be held the same hour, same day of the following week.~~

Special meetings

~~Special meetings may be scheduled by city staff or called by the City Clerk on the written request of the mayor or any three (3) councilmembers by providing each councilmember with twenty-four (24) hours' written notice served personally or left at their usual place of residence. Business transacted at any special meeting shall be limited to the subjects recited in the notice of such meeting.~~

Meeting place

All regular meetings shall be held in the council chambers, 311 Vernon Street, unless, by consensus, the City Council decides to meet elsewhere, in which case, notice of such alternate meeting place shall be posted by the City Clerk in a public place in advance of the proposed meeting in accordance with the Ralph M. Brown Act.

Meetings to be public

Except for closed sessions permitted by general state law, all City Council meetings shall be open to the public and members of the public shall have a reasonable opportunity to be heard.

Quorum

Three (3) councilmembers shall be a quorum for the transaction of business at City Council meetings except as otherwise provided by the charter. In the absence of a quorum, a lesser number of councilmembers or the City Clerk may adjourn the meeting to a later date.

Attendance and conduct at meetings

The City Council may, by vote of not less than two (2) of its members, enforce orderly conduct and compel the attendance of its members and other city officers at its meetings. Any member of the City Council or other officer of the city who refuses to attend such meetings or conducts themselves in a disorderly manner shall be deemed guilty of misconduct in office. Upon request of the City Council, the City Manager shall designate a police official or officer to serve as the sergeant-at-arms of the City Council.

Council rules

~~The City Council shall determine its own rules and order of business subject to the following provisions. There shall be minutes of all City Council meetings approved by the City Council and signed by the mayor and City Clerk and to which the public shall have access at all reasonable times. Within (30) days after any regular or special City Council meeting, minutes of the meeting shall be prepared by the City Clerk and presented to the City Council for its approval. A vote upon all ordinances and resolutions shall be taken individually by an affirmative or negative vote and entered upon the minutes, except that where the vote is unanimous it shall be necessary only to so state.~~

Order of business

The order of business at all regular meetings of the City Council shall be as follows:

- Closed Session Call to Order
- Closed Session Silent Roll Call
- Closed Session Public Comments
- Closed Session
- Closed Session Report Out
- Closed Session Adjournment
- Call to Order
- Roll Call
- Pledge of Allegiance
- Meeting Procedures
- Presentations
- Public Comments
- Consent Calendar
    - Minutes
    - Bids/Purchases/Services
    - Resolutions
    - Ordinances (for introduction and first reading)
    - Ordinances (for introduction and adoption – appropriation/urgency measures)
    - Ordinances (for second reading and adoption)
    - Reports/Requests
    - Ceremonial Documents
- Resolutions
- Ordinances
- Special Requests/Reports/Presentations
- Public Hearings
- Appointments
- Council/Staff/Reports/Comments
- Adjournment

CITY OF ROSEVILLE
CALIFORNIA

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City Attorney
Robert Schmitt
Phone: 916-774-5
Email: rschmitt@roseville.ca.us

City Clerk
Sonia Orozco
Phone: 916-774-5263
Email: sorozco@roseville.ca.us

Board/Commission Liaisons

Board of Appeals
Joe Speaker
Phone: 916-774-5325
Email: jspeaker@roseville.ca.us

Design Committee
Greg Bitter
Phone: 916-774-5294
Email: gbitter@roseville.ca.us

Economic Development Advisory Committee
Laura Matteoli
Phone: 916-774-5284
Email: lmatteoli@roseville.ca.us

Grants Advisory Commission
Laura Matteoli
Phone: 916-774-5284
Email: lmatteoli@roseville.ca.us

Library Board
Natasha Martin
Phone: 916-774-5234
Email: nmartin@roseville.ca.us

Parks & Recreation Commission
Jill Geller
Phone: 916-774-5249
Email: jageller@roseville.ca.us

Personnel Board
Stacey Peterson
Phone: 916-774-5374
Email: speterson@roseville.ca.us

Planning Commission
Greg Bitter
Phone: 916-774-5294
Email: gbitter@roseville.ca.us

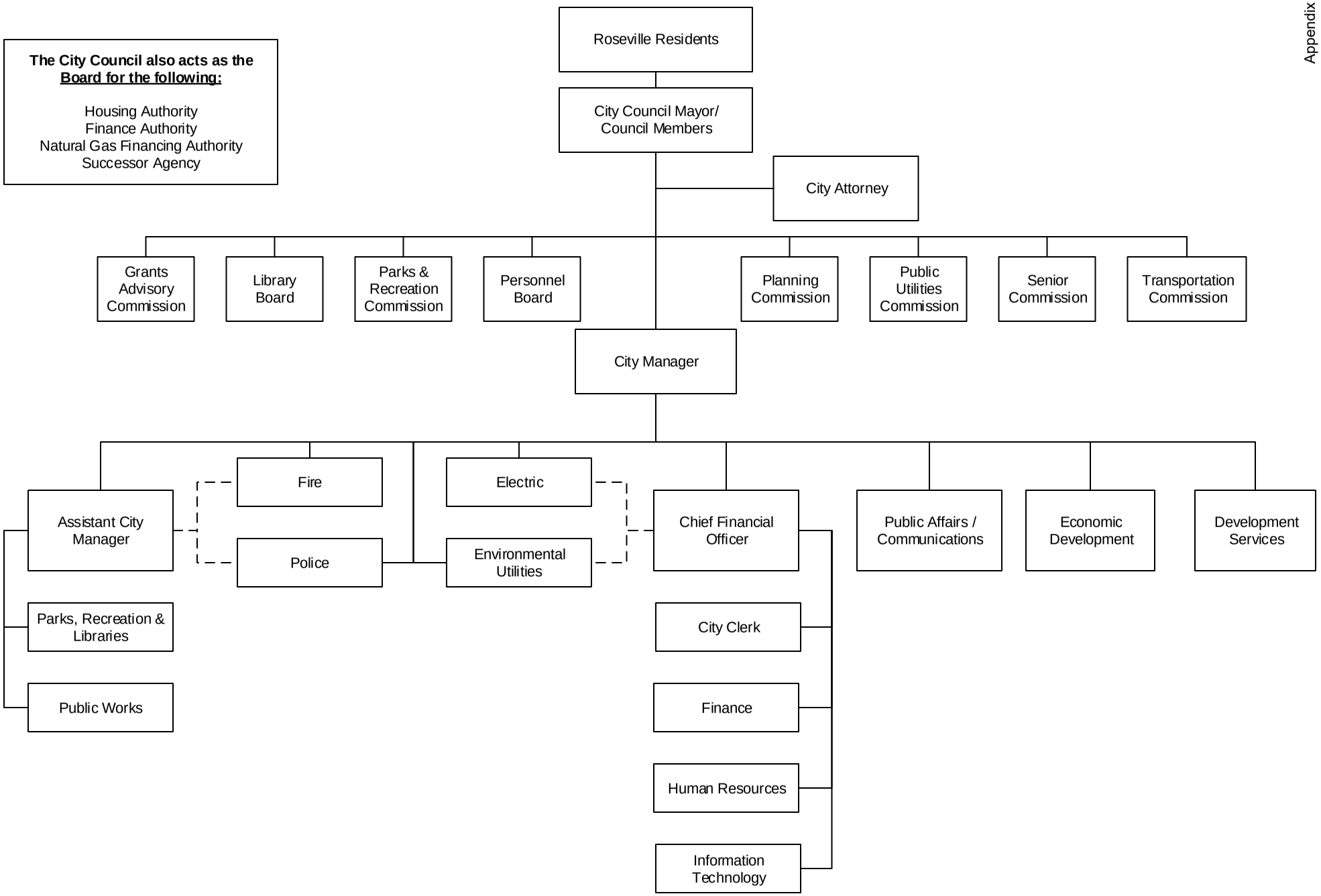
Public Utilities Commission
Michelle Bertolino
Phone: 916-774-5603
Email: mbertolino@roseville.ca.us

Richard Plecker
Phone: 916-746-1704
Email: rplecker@roseville.ca.us

Senior Commission
Kathy Barsotti
Phone: 916-774-5955
Email: kbarsotti@roseville.ca.us

Transportation Commission
Michael Dour
Phone: 916-746-1304
Email: mdour@roseville.ca.us

Youth Sports Coalition
Kristi LaRoche
Phone: 916-774-5962
Email: klaroche@roseville.ca.us

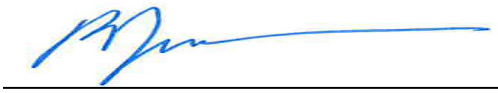


City Wide Organization (1,148.73 FTE)

CITY OF ROSEVILLE

ADMINISTRATIVE REGULATION

APPROVED:



ROB JENSEN, CITY MANAGER

Number: A.R. 2.03

Date Effective: May 15, 1987

Date Revised: July 15, 2016

SUBJECT: HARASSMENT, DISCRIMINATION, AND RETALIATION PREVENTION POLICY

PURPOSE

All employees are guaranteed the right to a work place free of hostility and intimidation. The City will neither tolerate nor condone harassment, discrimination, or retaliation of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business, service, or professional relationship.

POLICY

It is the policy of the City of Roseville that harassment, discrimination, or retaliation on the basis of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender, gender identity, gender expression, genetic information, marital status, political affiliation, military status, veteran status, family care leave status, pregnancy, physical or mental disability, medical condition, or any legally protected status (collectively "protected status") will not be condoned or tolerated. Retaliation against an employee for complaining or reporting any act of harassment, discrimination, or retaliation in violation of this policy is prohibited. Retaliation against an employee for participating in a harassment investigation is also prohibited. For the purpose of this policy, the term "employee" shall also include unpaid interns, volunteers, and persons providing services pursuant to a contract. The City is committed to ensuring and providing a work place free of harassment, discrimination, and retaliation. The City will take disciplinary action, up to and including termination, against an employee who violates this policy. An employee who engages in unlawful harassment is personally liable for the harassment.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment as defined by law is any unwanted sexual advances, requests for sexual favors, visual, verbal or physical conduct of a sexual nature, or written communications of a sexual nature when:

- Submission to such conduct is made a term or condition of employment; or
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting the employee; or
- Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Sexual harassment can occur between employees of the same sex.

CONDUCT PROHIBITED BY THIS POLICY

The City will not tolerate employees engaging in any of the conduct listed below:

- Unwanted sexual advances including repeatedly asking another employee on a date after being informed that the interest is unwelcome.
- Demands to provide sexual favors or offering employment benefits in exchange for sexual favors.
- Retaliation against an employee or threatening retaliation against an employee after a negative response to a sexual advance or proposition.
- Visual conduct such as leering, making sexual gestures or making derogatory or demeaning gestures of a person's protected status.
- Visual displays, including electronic media (e.g., screen savers) or printed media material (e.g., posters, cartoons, pictures, calendars, drawings), in the workplace that are sexually explicit or derogatory or demeaning of a protected status.
- Verbal conduct such as making or using derogatory comments, epithets, slurs, jokes, or threats.
- Sexually explicit jokes or comments or derogatory or suggestive comments about a person or a person's body, dress or sexual activities.
- Written communications of a sexual nature (e.g., obscene letters, notes or invitations) distributed in hard copy, via a computer network, or in any other format or medium.
- Written communications distributed in hard copy, via a computer network, or in any other format or medium containing statements which may be offensive to individuals in a particular protected status group, such as racial or ethnic stereotypes or caricatures.
- Unwelcome or unsolicited physical conduct, including but not limited to, touching, patting, pinching, hugging, kissing, grabbing, brushing against another person's body, assaulting, or impeding or blocking movements.
- Retaliation against an employee or threatening retaliation against an employee for making harassment reports or for participating in a harassment investigation.
- Discrimination against any job applicant or employee in hiring, promotions, assignments, termination, or any term, condition, or privilege of employment.
- Harassment, discrimination, or retaliation in any form on the basis of any legally protected status.

The City's policy prohibits males from sexually harassing females or other males, and females from sexually harassing males or other females.

FRIENDLY INTERACTION OR SEXUAL HARASSMENT

There is a clear line in most cases between mutual attraction and a consensual exchange and unwelcome behavior or pressure for an intimate relationship. A friendly, interaction between two persons who are receptive to one another is not considered unwelcome or harassment. Employees are free to form social relationships of their own choosing. However, when one employee is pursuing or forcing a relationship upon another who does not like or want it, regardless of friendly intentions, the behavior is unwelcome sexual behavior. An employee confronted with these actions by a co-worker should inform the harasser that such behavior is offensive and tell the harasser to stop. Another person does not have to tell the harasser to stop for the conduct to be considered harassment and unwelcome. Certainly if an employee is advised by a co-worker that his or her behavior is offensive, the employee must immediately stop the behavior, regardless of whether the employee asked to stop agrees with the other person's perception of his or her intentions.

An employee engaging in conduct prohibited by this policy shall be subject to appropriate disciplinary action, up to and including termination of employment. Any employee engaging in inappropriate conduct of a harassing nature on the basis of a protected status that is prohibited under federal or state anti-discrimination statutes shall be subject to appropriate disciplinary action, up to and including termination of employment.

RESPONSIBILITIES WHEN HARASSMENT OCCURS

Employees' responsibilities when subjected to harassment

Any employee who believes he or she has been subjected to harassment prohibited by this policy should immediately tell the harasser to stop his or her unwanted behavior and immediately report that behavior to his or her supervisor or to the City's Human Resources Department. An employee is not required to complain first to his or her supervisor, including if that supervisor is the individual engaging in the unwanted behavior. Employees may report any incidents directly to the Human Resources Director, who is located in the Human Resources Department and can be reached at (916) 774-5475, or as otherwise described below.

Employees' responsibilities with knowledge of harassment

Any employee who is aware of harassment in the workplace, whether or not the harassment is directed at them, has the responsibility of reporting the incident(s) to his or her supervisor or to the City's Human Resources Department.

Supervisors' responsibilities

Supervisors are responsible for enforcing the City's Harassment, Discrimination, and Retaliation Prevention Policy. Supervisors must ensure that all employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members. Supervisors should be cognizant of employees' behavior and shall not permit any employee under his or her authority to be subject to or engage in any conduct prohibited by the City's policy. Supervisors who receive complaints or who observe conduct prohibited by this policy shall inform the harassing employee to cease the conduct immediately and shall inform the Human Resources Department. The Human Resources Director is available to provide guidance, training and assistance as required. The City will take disciplinary action, up to and including termination, against any supervisor who fails in his or her responsibility to take immediate action in response to an employee's complaint of harassment or to stop

harassing conduct committed in his or her presence or to stop harassing conduct about which the supervisor has knowledge.

The City does not consider conduct in violation of this policy to be within the course and scope of employment and does not sanction such conduct on the part of any employee, including supervisory and management employees.

Enforcement Responsibilities

The City's harassment policy will be enforced by the City Manager, all Department Heads, and staff from the Human Resources Department. The Human Resources Director is responsible for investigating complaints. Each reported incident will be investigated promptly, impartially and in a confidential manner, accompanied by appropriate disposition of the complaint. Persons making false complaints will be subject to appropriate disciplinary actions.

OUTSIDE AGENCIES

In addition to notifying the City about harassment or retaliation complaints, affected employees may also direct their complaints to the following external agencies:

Department of Fair Employment and Housing ("DFEH")
Sacramento District Office
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Phone: (800) 884-1684

Equal Employment Opportunity Commission ("EEOC")
1301 Clay Street
Suite 1170-N
Oakland, CA 94612-5217
Phone: 1-800-669-4000

There are time limits for filing complaints with the DFEH and EEOC. Employees are advised to contact the DFEH or EEOC directly to obtain information on the time limits for filing complaints with these agencies.

If you have any questions or need information regarding your protections under pertinent laws regarding harassment or your rights regarding filing a complaint with the above compliance agencies, you may contact the City's Human Resources Department for assistance at (916) 774-5475.

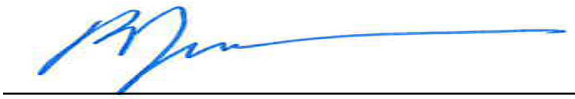
CONFIDENTIALITY

Investigations of alleged incidents of workplace harassment will be conducted in the most confidential manner possible. Individuals other than the immediate parties may be contacted during the fact-finding investigation process. All contacted parties are to cooperate fully and refrain from discussing the case outside the formal investigation process. Information regarding the allegations and investigation of harassment will be limited to those who have a legitimate need to know.

CITY OF ROSEVILLE

ADMINISTRATIVE REGULATION

APPROVED:



Rob Jensen, City Manager

Number: A.R. 2.14

Date Effective: February 22, 1993

Date Revised: January 19, 2017

SUBJECT: ACCEPTANCE OF GIFTS AND GRATUITIES BY CITY EMPLOYEES

PURPOSE

The purpose of this regulation is to adopt a citywide procedure and standard for the acceptance of gifts and gratuities by City employees. Roseville Municipal Code Section 3.15.030 governs the acceptance of gifts and gratuities by City employees. In order to help ensure that employees comply with this section, department heads and supervisors shall be responsible for compliance with this policy. While the City does not encourage employees to accept gifts and gratuities, it is recognized there may be circumstances where they are appropriate. Employees should exercise good judgment in determining whether they should accept or decline any offer. This policy will serve to guide the employee in the event that a gift or gratuity is extended.

POLICY

1. No employee shall accept or receive any benefit from a gift, gratuity, or service of any kind with a cumulative value of $470.00 (as mandated by the Fair Political Practices Commission) from any single source in a calendar year, which may be directly or indirectly offered as a result, or in anticipation, of any employee's position or performance of duties with the City.

2. Any employee who receives any gift, gratuity, or service of any kind of a value in excess of $50.00 shall, within three (3) days of receipt, report in writing to their department head or to the City Manager (if the recipient is a department head), the donor, gift, value and the date the gift was received.

3. The reporting requirements imposed by Municipal Code Section 3.15.030 and this administrative regulation are in addition to and not a substitute for any requirements imposed pursuant to the Political Reform Act. The provisions of this section apply to all employees, regardless of whether or not they are designated employees pursuant to the Political Reform Act.

4. Sworn personnel are not to receive any gifts or gratuities except when waived by the Police or Fire Chief respectively, and with advance prior notice.

SEXUAL HARASSMENT INCLUDES MANY FORMS OF OFFENSIVE BEHAVIORS

BEHAVIORS THAT MAY BE SEXUAL HARASSMENT:

1. *Unwanted sexual advances*
2. *Offering employment benefits in exchange for sexual favors*
3. *Leering; gestures; or displaying sexually suggestive objects, pictures, cartoons, or posters*
4. *Derogatory comments, epithets, slurs, or jokes*
5. *Graphic comments, sexually degrading words, or suggestive or obscene messages or invitations*
6. *Physical touching or assault, as well as impeding or blocking movements*

Actual or threatened retaliation for rejecting advances or complaining about harassment is also unlawful.

Employees or job applicants who believe that they have been sexually harassed or retaliated against may file a complaint of discrimination with DFEH within one year of the last act of harassment or retaliation. DFEH serves as a neutral fact-finder and attempts to help the parties voluntarily resolve disputes. If DFEH finds sufficient evidence to establish that discrimination occurred and settlement efforts fail, the Department may file a civil complaint in state or federal court to address the causes of the discrimination and on behalf of the complaining party. DFEH may seek court orders changing the employer's policies and practices, punitive damages, and attorney's fees and costs if it prevails in litigation. Employees can also pursue the matter through a private lawsuit in civil court after a complaint has been filed with DFEH and a Right-to-Sue Notice has been issued.

THE MISSION OF THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING IS TO PROTECT THE PEOPLE OF CALIFORNIA FROM UNLAWFUL DISCRIMINATION IN EMPLOYMENT, HOUSING AND PUBLIC ACCOMMODATIONS, AND FROM THE PERPETRATION OF ACTS OF HATE VIOLENCE AND HUMAN TRAFFICKING.

FOR MORE INFORMATION

Department of Fair Employment and Housing
Toll Free: (800) 884-1684
TTY: (800) 700-2320
Online: www.dfeh.ca.gov

Also find us on:

If you have a disability that prevents you from submitting a written intake form on-line, by mail, or email, the DFEH can assist you by scribing your intake by phone or, for individuals who are Deaf or Hard of Hearing or have speech disabilities, through the California Relay Service (711), or call us through your VRS at (800) 884-1684 (voice).

To schedule an appointment, contact the Communication Center at (800) 884-1684 (voice or via relay operator 711) or (800) 700-2320 (TTY) or by email at contact.center@dfeh.ca.gov.

The DFEH is committed to providing access to our materials in an alternative format as a reasonable accommodation for people with disabilities when requested.

Contact the DFEH at (800) 884-1684 (voice or via relay operator 711), TTY (800) 700-2320, or contact.center@dfeh.ca.gov to discuss your preferred format to access our materials or webpages.

DFEH-185-ENG / December 2017

SEXUAL HARASSMENT

THE FACTS

Sexual harassment is a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Individuals of any gender can be the target of sexual harassment. Unlawful sexual harassment does not have to be motivated by sexual desire. Sexual harassment may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity.

THERE ARE TWO TYPES OF SEXUAL HARASSMENT

1. *"Quid pro quo"* (Latin for "this for that") sexual harassment is when someone conditions a job, promotion, or other work benefit on your submission to sexual advances or other conduct based on sex.

2. *"Hostile work environment"* sexual harassment occurs when unwelcome comments or conduct based on sex unreasonably interfere with your work performance or create an intimidating, hostile, or offensive work environment. You may experience sexual harassment even if the offensive conduct was not aimed directly at you.

The harassment must be severe or pervasive to be unlawful. That means that it alters the conditions of your employment and creates an abusive work environment. A single act of harassment may be sufficiently severe to be unlawful.

CIVIL REMEDIES:

1. *Damages for emotional distress from each employer or person in violation of the law*
2. *Hiring or reinstatement*
3. *Back pay or promotion*
4. *Changes in the policies or practices of the employer*

EMPLOYER RESPONSIBILITY & LIABILITY

All employers, regardless of the number of employees, are covered by the harassment provisions of California law. Employers are liable for harassment by their supervisors or agents. All harassers, including both supervisory and non-supervisory personnel, may be held personally liable for harassment or for aiding and abetting harassment. The law requires employers to take reasonable steps to prevent harassment. If an employer fails to take such steps, that employer can be held liable for the harassment. In addition, an employer may be liable for the harassment by a non-employee (for example, a client or customer) of an employee, applicant, or person providing services for the employer. An employer will only be liable for this form of harassment if it knew or should have known of the harassment, and failed to take immediate and appropriate corrective action.

Employers have an affirmative duty to take reasonable steps to prevent and promptly correct discriminatory and harassing conduct, and to create a workplace free of harassment.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way for an employer to avoid or limit liability if harassment occurs.

ALL EMPLOYERS MUST TAKE THE FOLLOWING ACTIONS TO PREVENT HARASSMENT AND CORRECT IT WHEN IT occurs:

① Distribute copies of this brochure or an alternative writing that complies with Government Code 12950. This pamphlet may be duplicated in any quantity.

② Post a copy of the Department's employment poster entitled "California Law Prohibits Workplace Discrimination and Harassment."

③ Develop a harassment, discrimination, and retaliation prevention policy in accordance with 2 CCR 11023. The policy must:

- Be in writing.
- List all protected groups under the FEHA.
- Indicate that the law prohibits coworkers and third parties, as well as supervisors and managers with whom the employee comes into contact, from engaging in prohibited harassment.
- Create a complaint process that ensures confidentiality to the extent possible; a timely response; an impartial and timely investigation by qualified personnel; documentation and tracking for reasonable progress; appropriate options for remedial actions and resolutions; and timely closures.
- Provide a complaint mechanism that does not require an employee to complain directly to their immediate supervisor. That complaint mechanism must include, but is not limited to including: provisions for direct communication, either orally or in writing, with a designated company representative; and/or a complaint hotline; and/or access to an ombudsperson; and/or identification of DFEH and the United States Equal Employment Opportunity Commission as additional avenues for employees to lodge complaints.
- Instruct supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so that the company can try to resolve the claim internally. Employers with 50 or more employees are required to include this as a topic in mandated sexual harassment prevention training (see 2 CCR 11024).
- Indicate that when the employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected.
- Make clear that employees shall not be retaliated against as a result of making a complaint or participating in an investigation.

④ Distribute its harassment, discrimination, and retaliation prevention policy by doing one or more of the following:

- Printing the policy and providing a copy to employees with an acknowledgement form for employees to sign and return.
- Sending the policy via email with an acknowledgment return form.
- Posting the current version of the policy on a company intranet with a tracking system to ensure all employees have read and acknowledged receipt of the policy.
- Discussing policies upon hire and/or during a new hire orientation session.
- Using any other method that ensures employees received and understand the policy.

⑤ If the employer's workforce at any facility or establishment contains ten percent or more of persons who speak a language other than English as their spoken language, that employer shall translate the harassment, discrimination, and retaliation policy into every language spoken by at least ten percent of the workforce.

⑥ In addition, employers who do business in California and employ 50 or more part-time or full-time employees must provide at least two hours of training regarding sexual harassment and harassment based on gender identity, gender expression, and sexual orientation every two years to each supervisory employee and to all new supervisory employees within six months of their assumption of a supervisory position.

Disruption of the Meeting

Speaking Under Public Comment to an Item Listed on the Agenda

The following is a script of what should be stated by the Chair if an individual is speaking to an item under Public Comment when the item appears on the agenda and refuses to stop speaking:

Speaking Under Public Comment to an Item Listed on the Agenda

(Name of Individual)_____you are speaking to an item listed elsewhere on the agenda. I cannot permit the public to address items during Public Comment if they are listed elsewhere on the agenda. You may address this item when the item is called upon.

Please take your seat.

_____

Speaker Continues:

(Name of Individual)_____ by continuing to speak to an item during Public Comment when it is listed elsewhere on the agenda, you are disrupting the orderly conduct of the meeting. If you continue, I will have to order you to leave the meeting.

Do you understand this warning?

Please take your seat.

_____

Speaker Continues:

(Name of Individual)_____you have been given fair warning, and you have persisted in disrupting this meeting. I therefore order you to leave this meeting.*

*If a police officer is present at your meeting, have the officer escort the individual from the meeting. If no officer is present, recess the meeting and call for an officer to respond in order to avoid further confrontation during the meeting. Once the individual is removed, reconvene the meeting.

Speaking From the Audience

The following is a script of what should be stated by the Chair if an individual is speaking from the audience and refuses to stop making comments or gestures:

Speaking From the Audience

(Name of Individual)_____please do not disrupt the proceedings of the meeting from the audience.

_____

Speaker Continues:

(Name of Individual)_____by continuing to speak from the audience, you are disrupting the orderly conduct of the meeting. I am therefore giving you a warning If you continue, I will have to order you to leave the meeting.

Do you understand this warning?

_____

Speaker Continues:

(Name of Individual)_____ you have been given fair warning, and you have persisted in disrupting this meeting. I therefore order you to leave this meeting.*

*If a police officer is present at your meeting, have the officer escort the individual from the meeting. If no officer is present, recess the meeting and call for an officer to respond in order to avoid further confrontation during the meeting. Once the individual is removed, reconvene the meeting.

Repetitious Comments

The following is a script of what should be stated by the Chair if an individual is being repetitious:

Repetitious Comments

(Name of Individual)_____you have made this same point to the members on numerous occasions at this meeting (or at past meetings). Everyone on the Commission (or Board) has heard you make this point several times already. You are therefore being repetitious and disrupting the orderly conduct of the meeting, so I am giving you a warning, under Section 4.9 (b) of the Council's Rules of Procedure, that if you continue to repeat at this point, I will order you to leave this meeting.

_____

(

Speaker Continues:

(Name of Individual)_____ you have been given fair warning just now, and you have persisted in disrupting this meeting. I therefore order you to leave this meeting. Please escort Mr./Mrs. _____ from the meeting and ensure that he/she does not return tonight.

*If a police officer is present at your meeting, have the officer escort the individual from the meeting. If no officer is present, recess the meeting and call for an officer to respond in order to avoid further confrontation during the meeting. Once the individual is removed, reconvene the meeting.

Exceeds the 3 or 5 Minute Speaking Limit

The following is a script of what should be stated by the Chair if an individual will not conclude their comments within the prescribed time limit:

Exceeds the 3 or 5 Minute Speaking Limit

Name of Individual) you have used your 3/5 minute speaking time.

Please take your seat.

_____

Speaker Continues:

(Name of Individual) by continuing to speak after the 3/5 time limit has expired, you are disrupting the orderly conduct of the meeting. I am therefore giving you a warning under Roseville Police Department Procedure Manual Section 4.10 (b) [if during Public Comment portion of the Agenda] or Section 4.75 [if during an agenda item].

If any person fails or refuses to abide by these rules, the presiding officer may declare that the speaker is disrupting, disturbing or impeding the orderly conduct to the meeting and have the speaker removed from the meeting.

If you continue, I will have to order you to leave the meeting.

Do you understand this warning?

Please take your seat

_____

Speaker Continues:

(Name of Individual) you have been given fair warning, and you have persisted in disrupting this meeting. I therefore order you to leave this meeting.*

*If a police officer is present at your meeting, have the officer escort the individual from the meeting. If no officer is present, recess the meeting and call for an officer to respond in order to avoid further confrontation during the meeting. Once the individual is removed, reconvene the meeting.

Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

LEAGUE® OF CALIFORNIA CITIES

MISSION AND CORE BELIEFS

To expand and protect local control for cities through education and advocacy to enhance the quality of life for all Californians.

VISION

To be recognized and respected as the leading advocate for the common interests of California's cities.

About the League of California Cities

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and automony of city government and help California's cities effectively serve their residents. In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts education conferences and research, and publishes Western City magazine.

About the Author

Dave Rosenberg is a Superior Court Judge in Yolo County. He has served as presiding judge of his court, and as presiding judge of the Superior Court Appellate Division. He also has served as chair of the Trial Court Presiding Judges Advisory Committee (the committee composed of all 58 California presiding judges) and as an advisory member of the California Judicial Council. Prior to his appointment to the bench, Rosenberg was member of the Yolo County Board of Supervisors, where he served two terms as chair. Rosenberg also served on the Davis City Council, including two terms as mayor. He has served on the senior staff of two governors, and worked for 19 years in private law practice. Rosenberg has served as a member and chair of numerous state, regional and local boards. Rosenberg chaired the California State Lottery Commission, the California Victim Compensation and Government Claims Board, the Yolo-Solano Air Quality Management District, the Yolo County Economic Development Commission, and the Yolo County Criminal Justice Cabinet. For many years, he has taught classes on parliamentary procedure and has served as parliamentarian for large and small bodies.

Table of Contents

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules — *Robert's Rules of Order* — which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time and for another purpose. If one is chairing or running a parliament, then *Robert's Rules of Order* is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of say, a five-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of *Rosenberg's Rules of Order*.

What follows is my version of the rules of parliamentary procedure, based on my decades of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed. Interestingly enough, *Rosenberg's Rules* has found a welcoming audience. Hundreds of cities, counties, special districts, committees, boards, commissions, neighborhood associations and private corporations and companies have adopted *Rosenberg's Rules* in lieu of *Robert's Rules* because they have found them practical, logical, simple, easy to learn and user friendly.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars:

1. **Rules should establish order.** The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings.
2. **Rules should be clear.** Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate.
3. **Rules should be user friendly.** That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.
4. **Rules should enforce the will of the majority while protecting the rights of the minority.** The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, while fully participating in the process.

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs the body loses its ability to transact business until and unless a quorum is reestablished.

The default rule, identified above, however, gives way to a specific rule of the body that establishes a quorum. For example, the rules of a particular five-member body may indicate that a quorum is four members for that particular body. The body must follow the rules it has established for its quorum. In the absence of such a specific rule, the quorum is one more than half the members of the body.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the chair of the body who is charged with applying the rules of conduct of the meeting. The chair should be well versed in those rules. For all intents and purposes, the chair makes the final ruling on the rules every time the chair states an action. In fact, all decisions by the chair are final unless overruled by the body itself.

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision-making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. Each agenda item can be handled by the chair in the following basic format:

First, the chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the chair may limit the time of public speakers. At the conclusion of the public comments, the chair should announce that public input has concluded (or the public hearing, as the case may be, is closed).

Fifth, the chair should invite a motion. The chair should announce the name of the member of the body who makes the motion.

Sixth, the chair should determine if any member of the body wishes to second the motion. The chair should announce the name of the member of the body who seconds the motion. It is normally good practice for a motion to require a second before proceeding to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the chair.

Seventh, if the motion is made and seconded, the chair should make sure everyone understands the motion.

This is done in one of three ways:

1. The chair can ask the maker of the motion to repeat it;
2. The chair can repeat the motion; or
3. The chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the chair takes a vote. Simply asking for the "ayes" and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain." Unless the rules of the body provide otherwise (or unless a super majority is required as delineated later in these rules), then a simple majority (as defined in law or the rules of the body as delineated later in these rules) determines whether the motion passes or is defeated.

Tenth, the chair should announce the result of the vote and what action (if any) the body has taken. In announcing the result, the chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring a 10-day notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words "I move … "

A typical motion might be: "I move that we give a 10-day notice in the future for all our meetings."

The chair usually initiates the motion in one of three ways:

1. **Inviting the members of the body to make a motion,** for example, "A motion at this time would be in order."
2. **Suggesting a motion to the members of the body,** "A motion would be in order that we give a 10-day notice in the future for all our meetings."
3. **Making the motion.** As noted, the chair has every right as a member of the body to make a motion, but should normally do so only if the chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused, but they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So if a member makes what that member calls a "motion to amend," but the chair determines that it is really a "substitute motion," then the chair's designation governs.

A "friendly amendment" is a practical parliamentary tool that is simple, informal, saves time and avoids bogging a meeting down with numerous formal motions. It works in the following way: In the discussion on a pending motion, it may appear that a change to the motion is desirable or may win support for the motion from some members. When that happens, a member who has the floor may simply say, "I want to suggest a friendly amendment to the motion." The member suggests the friendly amendment, and if the maker and the person who seconded the motion pending on the floor accepts the friendly amendment, that now becomes the pending motion on the floor. If either the maker or the person who seconded rejects the proposed friendly amendment, then the proposer can formally move to amend.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The chair can reject a fourth motion until the chair has dealt with the three that are on the floor and has resolved them. This rule has practical value. More than three motions on the floor at any given time is confusing and unwieldy for almost everyone, including the chair.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.

Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed,* the chair would then move to consider the main motion (the first motion) in its original format, not amended.

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):

Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion can contain a specific time in which the item can come back to the body. "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or sometimes someone simply shouts out "question." As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a "request" rather than as a formal motion. The chair can simply inquire of the body, "any further discussion?" If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the "question" as a formal motion, and proceed to it.

When a member of the body makes such a motion ("I move the previous question"), the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

NOTE: A motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a two-thirds vote of the body. A similar motion is a *motion to object to consideration of an item.* This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a two-thirds vote.

Majority and Super Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a seven-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which effectively cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a two-thirds majority (a super majority) to pass:

Motion to limit debate. Whether a member says, "I move the previous question," or "I move the question," or "I call the question," or "I move to limit debate," it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a two-thirds vote to pass.

Motion to close nominations. When choosing officers of the body (such as the chair), nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers and it requires a two-thirds vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a two-thirds vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a two-thirds vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

Counting Votes

The matter of counting votes starts simple, but can become complicated.

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

If a two-thirds majority vote is needed to pass a motion, then how many affirmative votes are required? The simple rule of thumb is to count the "no" votes and double that count to determine how many "yes" votes are needed to pass a particular motion. For example, in a seven-member body, if two members vote "no" then the "yes" vote of at least four members is required to achieve a two-thirds majority vote to pass the motion.

What about tie votes? In the event of a tie, the motion always fails since an affirmative vote is required to pass any motion. For example, in a five-member body, if the vote is two in favor and two opposed, with one member absent, the motion is defeated.

Vote counting starts to become complicated when members vote "abstain" or in the case of a written ballot, cast a blank (or unreadable) ballot. Do these votes count, and if so, how does one count them? The starting point is always to check the statutes.

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in

California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

After consulting state statutes, step number two is to check the rules of the body. If the rules of the body say that you count votes of "those present" then you treat abstentions one way. However, if the rules of the body say that you count the votes of those "present and voting," then you treat abstentions a different way. And if the rules of the body are silent on the subject, then the general rule of thumb (and default rule) is that you count all votes that are "present and voting."

Accordingly, under the "present and voting" system, you would **NOT** count abstention votes on the motion. Members who abstain are counted for purposes of determining quorum (they are "present"), but you treat the abstention votes on the motion as if they did not exist (they are not "voting"). On the other hand, if the rules of the body specifically say that you count votes of those "present" then you **DO** count abstention votes both in establishing the quorum and on the motion. In this event, the abstention votes act just like "no" votes.

How does this work in practice?
Here are a few examples.

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in and we count all votes of members that are "present and voting." If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

Assume a five-member city council voting on a motion that requires a two-thirds majority vote to pass, and further assume that the body has no specific rule on counting votes. Again, the default rule applies. If the vote is 3-2, the motion fails for lack of a two-thirds majority. If the vote is 4-1, the motion passes with a clear two-thirds majority. A vote of three "yes," one "no" and one "abstain" also results in passage of the motion. Once again, the abstention is counted only for the purpose of determining quorum, but on the actual vote on the motion, it is as if the abstention vote never existed — so an effective 3-1 vote is clearly a two-thirds majority vote.

Now, change the scenario slightly. Assume the same five-member city council voting on a motion that requires a two-thirds majority vote to pass, but now assume that the body **DOES** have a specific rule requiring a two-thirds vote of members "present." Under this specific rule, we must count the members present not only for quorum but also for the motion. In this scenario, any abstention has the same force and effect as if it were a "no" vote. Accordingly, if the votes were three "yes," one "no" and one "abstain," then the motion fails. The abstention in this case is treated like a "no" vote and effective vote of 3-2 is not enough to pass two-thirds majority muster.

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

Can a member vote "absent" or "count me as absent?" Interesting question. The ruling on this is up to the chair. The better approach is for the chair to count this as if the member had left his/her chair and is actually "absent." That, of course, affects the quorum. However, the chair may also treat this as a vote to abstain, particularly if the person does not actually leave the dais.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself; the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to reopening if a proper motion to consider is made and passed.

A motion to reconsider requires a majority vote to pass like other garden-variety motions, but there are two special rules that apply only to the motion to reconsider.

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

Second, a motion to reconsider may be made only by certain members of the body. Accordingly, a motion to reconsider may be made only by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she may make the motion to reconsider (any other member of the body — including a member who voted in the minority on the original motion — may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of minority could make a motion to reconsider, then the item could be brought back to the body again and again, which would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is in order. The matter may be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the chair before proceeding to speak.

The chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be, "point of privilege." The chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be, "point of order." Again, the chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the chair discovers that the agenda has not been followed, the chair simply reminds the body to return to the agenda item properly before them. If the chair fails to do so, the chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.

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Appendix VII

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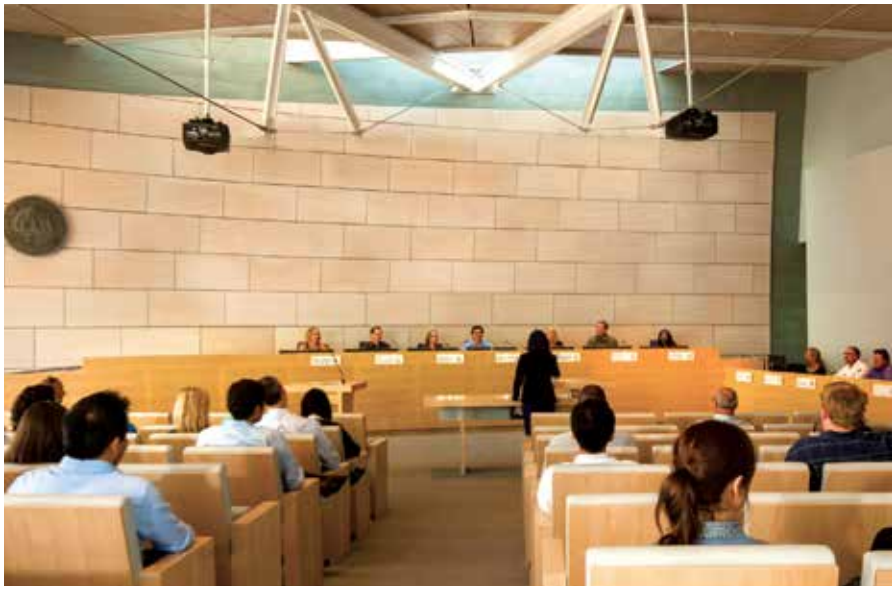

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A GUIDE TO THE RALPH M. BROWN ACT

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IT IS THE PEOPLE'S BUSINESS

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The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the Brown Act's initial section, declaring the Legislature's intent:

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

"The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."[1]

The people reconfirmed that intent 50 years later in the November 2004 election by adopting Proposition 59, amending the California Constitution to include a public right of access to government information:

> *"The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny."*[2]

PRACTICE TIP: The key to the Brown Act is a single sentence. In summary, all meetings shall be **open and public** except when the Brown Act authorizes otherwise.

The Brown Act's other unchanged provision is a single sentence:

> *"All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter."*[3]

That one sentence is by far the most important of the entire Brown Act. If the opening is the soul, that sentence is the heart of the Brown Act.

Broad coverage

The Brown Act covers members of virtually every type of local government body, elected or appointed, decision-making or advisory. Some types of private organizations are covered, as are newly-elected members of a legislative body, even before they take office.

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body

discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

New communication technologies present new Brown Act challenges. For example, common email practices of forwarding or replying to messages can easily lead to a serial meeting prohibited by the Brown Act, as can participation by members of a legislative body in an internet chatroom or blog dialogue. Communicating during meetings using electronic technology (such as laptop computers, tablets, or smart phones) may create the perception that private communications are influencing the outcome of decisions; some state legislatures have banned the practice. On the other hand, widespread cablecasting and web streaming of meetings has greatly expanded public access to the decision-making process.

Narrow exemptions

The express purpose of the Brown Act is to assure that local government agencies conduct the public's business openly and publicly. Courts and the California Attorney General usually broadly construe the Brown Act in favor of greater public access and narrowly construe exemptions to its general rules.[4]

Generally, public officials should think of themselves as living in glass houses, and that they may only draw the curtains when it is in the public interest to preserve confidentiality. Closed sessions may be held only as specifically authorized by the provisions of the Brown Act itself.

The Brown Act, however, is limited to meetings among a majority of the members of multi-member government bodies when the subject relates to local agency business. It does not apply to independent conduct of individual decision-makers. It does not apply to social, ceremonial, educational, and other gatherings as long as a majority of the members of a body do not discuss issues related to their local agency's business. Meetings of temporary advisory committees — as distinguished from standing committees — made up solely of less than a quorum of a legislative body are not subject to the Brown Act.

The law does not apply to local agency staff or employees, but they may facilitate a violation by acting as a conduit for discussion, deliberation, or action by the legislative body.[5]

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents. On the other hand, it requires — with certain specific exceptions to protect the community and preserve individual rights — that the decision-making process be public. Sometimes the boundary between the two is not easy to draw.

PRACTICE TIP: Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest. A local policy on the use of laptop computers, tablets, and smart phones during Brown Act meetings may help avoid problems.

Public participation in meetings

In addition to requiring the public's business to be conducted in open, noticed meetings, the Brown Act also extends to the public the right to participate in meetings. Individuals, lobbyists, and members of the news media possess the right to attend, record, broadcast, and participate in public meetings. The public's participation is further enhanced by the Brown Act's requirement that a meaningful agenda be posted in advance of meetings, by limiting discussion and action to matters listed on the agenda, and by requiring that meeting materials be made available.

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and irrelevant speech.

Controversy

Not surprisingly, the Brown Act has been a source of confusion and controversy since its inception. News media and government watchdogs often argue the law is toothless, pointing out that there has never been a single criminal conviction for a violation. They often suspect that closed sessions are being misused.

Public officials complain that the Brown Act makes it difficult to respond to constituents and requires public discussions of items better discussed privately — such as why a particular person should not be appointed to a board or commission. Many elected officials find the Brown Act inconsistent with their private business experiences. Closed meetings can be more efficient; they eliminate grandstanding and promote candor. The techniques that serve well in business — the working lunch, the sharing of information through a series of phone calls or emails, the backroom conversations and compromises — are often not possible under the Brown Act.

As a matter of public policy, California (along with many other states) has concluded that there is more to be gained than lost by conducting public business in the open. Government behind closed doors may well be efficient and business-like, but it may be perceived as unresponsive and untrustworthy.

PRACTICE TIP: Transparency is a foundational value for ethical government practices. The Brown Act is a floor, not a ceiling, for conduct.

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions are too brief or vague, when an informal get-together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.[6] Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

A local policy could build on these basic Brown Act goals:

- A legislative body's need to get its business done smoothly;
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time;
- A local agency's right to confidentially address certain negotiations, personnel matters, claims and litigation; and
- The right of the press to fully understand and communicate public agency decision-making.

An explicit and comprehensive public meeting and information policy, especially if reviewed periodically, can be an important element in maintaining or improving public relations. Such a policy exceeds the absolute requirements of the law — but if the law were enough, this guide would be unnecessary. A narrow legalistic approach will not avoid or resolve potential controversies. An agency should consider going beyond the law, and look at its unique circumstances and determine if there is a better way to prevent potential problems and promote public trust. At the very least, local agencies need to think about how their agendas are structured in order to make Brown Act compliance easier. They need to plan carefully to make sure public participation fits smoothly into the process.

Achieving balance

The Brown Act should be neither an excuse for hiding the ball nor a mechanism for hindering efficient and orderly meetings. The Brown Act represents a balance among the interests of constituencies whose interests do not always coincide. It calls for openness in local government, yet should allow government to function responsively and productively.

There must be both adequate notice of what discussion and action is to occur during a meeting as well as a normal degree of spontaneity in the dialogue between elected officials and their constituents.

The ability of an elected official to confer with constituents or colleagues must be balanced against the important public policy prohibiting decision-making outside of public meetings.

In the end, implementation of the Brown Act must ensure full participation of the public and preserve the integrity of the decision-making process, yet not stifle government officials and impede the effective and natural operation of government.

PRACTICE TIP: The Brown Act should be viewed as a tool to facilitate the business of local government agencies. Local policies that go beyond the minimum requirements of law may help instill public confidence and avoid problems.

Historical note

In late 1951, *San Francisco Chronicle* reporter Mike Harris spent six weeks looking into the way local agencies conducted meetings. State law had long required that business be done in public, but Harris discovered secret meetings or caucuses were common. He wrote a 10-part series on "Your Secret Government" that ran in May and June 1952.

Out of the series came a decision to push for a new state open meeting law. Harris and Richard (Bud) Carpenter, legal counsel for the League of California Cities, drafted such a bill and Assembly Member Ralph M. Brown agreed to carry it. The Legislature passed the bill and Governor Earl Warren signed it into law in 1953.

The Ralph M. Brown Act, known as the Brown Act, has evolved under a series of amendments and court decisions, and has been the model for other open meeting laws — such as the Bagley-Keene Act, enacted in 1967 to cover state agencies.

Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

ENDNOTES:

1 California Government Code section 54950

2 California Constitution, Art. 1, section 3(b)(1)

3 California Government Code section 54953(a)

4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).

5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533

6 California Government Code section 54953.7

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Chapter 2

LEGISLATIVE BODIES

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LEGISLATIVE BODIES

The Brown Act applies to the legislative bodies of local agencies. It defines "legislative body" broadly to include just about every type of decision-making body of a local agency.[1]

What is a "legislative body" of a local agency?

A "legislative body" includes:

- **The "governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

PRACTICE TIP: The prudent presumption is that an advisory committee or task force is subject to the Brown Act. Even if one clearly is not, it may want to comply with the Brown Act. Public meetings may reduce the possibility of misunderstandings and controversy.

- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

Q. On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?

A. *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the

Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

Q: The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?

A: *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*

Q: If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

A: *Yes. But, if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital)

PRACTICE TIP: It can be difficult to determine whether a subcommittee of a body falls into the category of a standing committee or an exempt temporary committee. Suppose a committee is created to explore the renewal of a franchise or a topic of similarly limited scope and duration. Is it an exempt temporary committee or a non-exempt standing committee? The answer may depend on factors such as how meeting schedules are determined, the scope of the committee's charge, or whether the committee exists long enough to have "continuing jurisdiction."

first leased under Health and Safety Code subsection 32121(p) after January 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[16]

What is not a "legislative body" for purposes of the Brown Act?

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

  Q. A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?

  A. *No, because the committee has not been established by formal action of the legislative body.*

  Q. During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?

  A. *Possibly, because the direction from the city council might be regarded as a formal action of the body notwithstanding that the city manager controls the committee.*

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

ENDNOTES:

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

2 California Government Code section 54952(a) and (b)

3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550

5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)

6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362

7 California Government Code section 54952.1

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

9 California Government Code section 54952(b)

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

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

12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)

13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)

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

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

16 California Government Code section 54952(d)

17 California Government Code section 54952(b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.

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

19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973)

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

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

22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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MEETINGS

The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "… and any congregation of a majority of the members of a legislative body at the same time and location, including teleconference location as permitted by Section 54953, to hear, discuss, deliberate, or take any action on any item that is within the subject matter jurisdiction of the legislative body."[1] The term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.[2]

Brown Act meetings

Brown Act meetings include a legislative body's regular meetings, special meetings, emergency meetings, and adjourned meetings.

- **"Regular meetings"** are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.[3]
- **"Special meetings"** are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings and are subject to 24-hour posting requirements.[4]
- **"Emergency meetings"** are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.[5]
- **"Adjourned meetings"** are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.[6]

Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:[7]

Individual Contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on his or her own. This exception recognizes the right to confer with constituents, advocates, consultants, news reporters, local agency staff, or a colleague.

Individual contacts, however, cannot be used to do in stages what would be prohibited in one step. For example, a series of individual contacts that leads to discussion, deliberation, or action among a majority of the members of a legislative body is prohibited. Such serial meetings are discussed below.

Conferences

The second exception allows a legislative body majority to attend a conference or similar gathering open to the public that addresses issues of general interest to the public or to public agencies of the type represented by the legislative body.

Among other things, this exception permits legislative body members to attend annual association conferences of city, county, school, community college, and other local agency officials, so long as those meetings are open to the public. However, a majority of members cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within their local agency's subject matter jurisdiction.

Community Meetings

The third exception allows a legislative body majority to attend an open and publicized meeting held by another organization to address a topic of local community concern. A majority cannot discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the legislative body's subject matter jurisdiction. Under this exception, a legislative body majority may attend a local service club meeting or a local candidates' night if the meetings are open to the public.

> **"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition. "I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"**
>
> *The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.*

Q. The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?

A. *Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.*

Other Legislative Bodies

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency; and (2) a legislative body of another local agency.[8] Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony or trying to influence the outcome of proceedings before a subordinate body.

Q. The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?

A. *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*

Q. The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?

A. *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

Q. The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?

A. *She may attend, but only as an observer; she may not participate.*

Social or Ceremonial Events

The final exception permits a majority of a legislative body to attend a purely social or ceremonial occasion. Once again, a majority cannot discuss business among themselves of a specific nature that is within the subject matter jurisdiction of the legislative body.

Nothing in the Brown Act prevents a majority of members from attending the same football game, party, wedding, funeral, reception, or farewell. The test is not whether a majority of a legislative body attends the function, but whether business of a specific nature within the subject matter jurisdiction of the body is discussed. So long as no such business is discussed, there is no violation of the Brown Act.

Grand Jury Testimony

In addition, members of a legislative body, either individually or collectively, may give testimony in private before a grand jury.[10] This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements.

Retreats or workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or team building and group dynamics.[11]

Q. The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?

A. *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting … use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."[12] The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a "daisy chain" or a "hub and spoke" sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated, or taken action on an item within the legislative body's subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, and D and so on (the spokes), until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body or one of its members, communicates with a majority of members (the spokes) one-by-one for for discussion, deliberation, or a decision on a proposed action.[13] Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague (but not with a majority of the body, counting the member) or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[14]

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.[16] Such a memo, however, may be a public record.[17]

> **The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"**
>
> **"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"**
>
> **"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."**
>
> **Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"**

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating

a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

> **The mayor sat down across from the city manager. "From now on," he declared, "I want you to provide individual briefings on upcoming agenda items. Some of this material is very technical, and the council members don't want to sound like idiots asking about it in public. Besides that, briefings will speed up the meeting."**

Agency employees or officials may have separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."[18] Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.

> **"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."**
>
> **"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"**
>
> **"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."**

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

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

Q. The agency's website includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

A. *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*

Q. A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?

A. *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply to all" button that may inadvertently result in a Brown Act violation.

Informal gatherings

Often members are tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[19] A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an opportunity to attend, hear, or participate in the deliberations of members.

> **Thursday at 11:30 a.m., as they did every week, the board of directors of the Dry Gulch Irrigation District trooped into Pop's Donut Shoppe for an hour of talk and fellowship. They sat at the corner window, fronting on Main and Broadway, to show they had nothing to hide. Whenever he could, the managing editor of the weekly newspaper down the street hurried over to join the board.**

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

Q. The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?

A. *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

Technological conferencing

Except for certain nonsubstantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But, in an effort to keep up with information age technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[20] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either

audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction;
- Additional teleconference locations may be made available for the public;
- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location, including a hotel room or residence, must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

Q. A member on vacation wants to participate in a meeting of the legislative body and vote by cellular phone from her car while driving from Washington, D.C. to New York. May she?

A. *She may not participate or vote because she is not in a noticed and posted teleconference location.*

The use of teleconferencing to conduct a legislative body meeting presents a variety of issues beyond the scope of this guide to discuss in detail. Therefore, before teleconferencing a meeting, legal counsel for the local agency should be consulted.

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[23]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[24]

- Comply with state or federal law or a court order, or attend a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property that cannot be conveniently brought into the local agency's territory, provided the meeting is limited to items relating to that real or personal property;

Q. The agency is considering approving a major retail mall. The developer has built other similar malls, and invites the entire legislative body to visit a mall outside the jurisdiction. May the entire body go?

A. *Yes, the Brown Act permits meetings outside the boundaries of the agency for specified reasons and inspection of property is one such reason. The field trip must be treated as a meeting and the public must be allowed to attend.*

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction;
- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility; or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.[25]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[26] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[27]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[28]

Endnotes:

1 California Government Code section 54952.2(a)

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

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

8 California Government Code section 54952.2(c)(4)

9 California Government Code section 54952.2(c)(6)

10 California Government Code section 54953.1

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

12 California Government Code section 54952.2(b)(1)

13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95

14 California Government Code section 54952.2(b)(2)

15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518

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

17 California Government Code section 54957.5(a)

18 California Government Code section 54952.2(b)(2)

19 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)

20 California Government Code section 54953(b)(1)

21 California Government Code section 54953(b)(4)

22 California Government Code section 54953

23 California Government Code section 54954(b)

24 California Government Code section 54954(b)(1)-(7)

25 94 Ops.Cal.Atty.Gen. 15 (2011)

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

Effective notice is essential for an open and public meeting. Whether a meeting is open or how the public may participate in that meeting is academic if nobody knows about the meeting.

Agendas for regular meetings

Every regular meeting of a legislative body of a local agency — including advisory committees, commissions, or boards, as well as standing committees of legislative bodies — must be preceded by a posted agenda that advises the public of the meeting and the matters to be transacted or discussed.

The agenda must be posted at least 72 hours before the regular meeting in a location "freely accessible to members of the public."[1] The courts have not definitively interpreted the "freely accessible" requirement. The California Attorney General has interpreted this provision to require posting in a location accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.[2] This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.[3] While posting an agenda on an agency's Internet website will not, by itself, satisfy the "freely accessible" requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[4]

Q. May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city's website or if the website was not operational during part or all of the 72-hour period preceding the meeting?

A. *At a minimum, the Brown Act calls for "substantial compliance" with all agenda posting requirements, including posting to the agency website.[5] Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties which cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.[6] This inquiry requires a fact-specific examination of whether the agency or its legislative body made "reasonably effective efforts to notify interested persons of a public meeting" through online posting and other available means.[7] The Attorney General's opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] Special care should be taken to describe on the agenda each distinct action to be taken by the legislative body, and avoid overbroad descriptions of a "project" if the "project" is actually a set of distinct actions that must each be separately listed on the agenda.[10]

PRACTICE TIP: Putting together a meeting agenda requires careful thought.

Q. The agenda for a regular meeting contains the following items of business:

- Consideration of a report regarding traffic on Eighth Street; and
- Consideration of contract with ABC Consulting.

Are these descriptions adequate?

A. *If the first is, it is barely adequate. A better description would provide the reader with some idea of what the report is about and what is being recommended. The second is not adequate. A better description might read "consideration of a contract with ABC Consulting in the amount of $50,000 for traffic engineering services regarding traffic on Eighth Street."*

Q. The agenda includes an item entitled City Manager's Report, during which time the city manager provides a brief report on notable topics of interest, none of which are listed on the agenda.

Is this permissible?

A. *Yes, so long as it does not result in extended discussion or action by the body.*

A brief general description may not be sufficient for closed session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions. Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted. If requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[11]

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed. Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda — with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: (1) at a site that is freely accessible to the public, and (2) on the agency's website if: (1) the local agency has a website; and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body, or (b) has members that are compensated, with one or more members that are also members of a governing body.[12]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[14] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[15]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[16] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

News media may make a practice of having written requests on file for notification of special or emergency meetings. Absent such a request, a local agency has no legal obligation to notify news media of special or emergency meetings — although notification may be advisable in any event to avoid controversy.

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces: (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[17]

No oral disclosure of the amount of the compensation is required if the entire amount of such compensation is prescribed by statute and no additional compensation has been authorized by the local agency. Further, no disclosure is required with respect to reimbursements for actual and necessary expenses incurred in the performance of the member's official duties, such as for travel, meals, and lodging.

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[18] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[19] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and to address the board on those items.[20]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[21] Though written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[22] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[23]

- When a majority decides there is an "emergency situation" (as defined for emergency meetings);
- When two-thirds of the members present (or all members if less than two-thirds are present) determine there is a need for immediate action and the need to take action "came to the attention of the local agency subsequent to the agenda being posted." This exception requires a degree of urgency. Further, an item cannot be considered under this provision if the legislative body or the staff knew about the need to take immediate action before the agenda was posted. A new need does not arise because staff forgot to put an item on the agenda or because an applicant missed a deadline; or
- When an item appeared on the agenda of, and was continued from, a meeting held not more than five days earlier.

PRACTICE TIP: Subject to very limited exceptions, the Brown Act prohibits any action or discussion of an item not on the posted agenda.

The exceptions are narrow, as indicated by this list. The first two require a specific determination by the legislative body. That determination can be challenged in court and, if unsubstantiated, can lead to invalidation of an action.

> **"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.**
>
> **"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"**

The desire to stay ahead of schedule generally would not satisfy "a need for immediate action." Too casual an action could invite a court challenge by a disgruntled resident. The prudent course is to place an item on the agenda for the next meeting and not risk invalidation.

> **"We learned this morning of an opportunity for a state grant," said the chief engineer at the regular board meeting, "but our application has to be submitted in two days. We'd like the board to give us the go ahead tonight, even though it's not on the agenda."**

A legitimate immediate need can be acted upon even though not on the posted agenda by following a two-step process:

- First, make two determinations: 1) that there is an immediate need to take action, and 2) that the need arose after the posting of the agenda. The matter is then placed on the agenda.
- Second, discuss and act on the added agenda item.

Responding to the public

The public can talk about anything within the jurisdiction of the legislative body, but the legislative body generally cannot act on or discuss an item not on the agenda. What happens when a member of the public raises a subject not on the agenda?

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.[24] However, caution should be used to avoid any discussion or action on such items.

Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street — are there problems with this project?

City Manager Frank: The public works director has prepared a 45-minute power point presentation for you on the status of this project and will give it right now.

Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

A number of Brown Act provisions protect the public's right to attend, observe, and participate in meetings.

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[25]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[26] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[27]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]

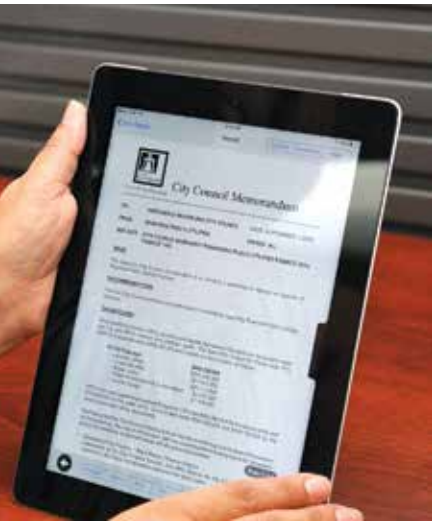
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[30]

Q: The agenda calls for election of the legislative body's officers. Members of the legislative body want to cast unsigned written ballots that would be tallied by the clerk, who would announce the results. Is this voting process permissible?

A: *No. The possibility that a public vote might cause hurt feelings among members of the legislative body or might be awkward — or even counterproductive — does not justify a secret ballot.*

The legislative body may remove persons from a meeting who willfully interrupt proceedings.[31] Ejection is justified only when audience members actually disrupt the proceedings.[32] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.[33]



Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[34] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[35]

Q: In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?

A: *No. The memorandum is a privileged attorney-client communication.*

Q: In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?

A. *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A non-exempt or otherwise privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.[36] A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.[37]

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[38] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[39]

In addition, the public is specifically allowed to use audio or video tape recorders or still or motion picture cameras at a meeting to record the proceedings, absent a reasonable finding by the legislative body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.[40]

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, so long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[42]

Q. Must the legislative body allow members of the public to show videos or make a power point presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?

A. *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But the Brown Act provides no immunity for defamatory statements.[43]

PRACTICE TIP: Public speakers cannot be compelled to give their name or address as a condition of speaking. The clerk or presiding officer may request speakers to complete a speaker card or identify themselves for the record, but must respect a speaker's desire for anonymity.

Q. May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?

A. *No, as long as the criticism pertains to job performance.*

Q. During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?

A. *There is no case law on this subject. Some would argue that campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section because it is relevant to the governing of the agency and an implicit criticism of the incumbents.*

The legislative body may adopt reasonable regulations, including time limits, on public comments. Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[44]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.[45]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[46]

Endnotes:

1 California Government Code section 54954.2(a)(1)

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

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

4 California Government Code sections 54954.2(a)(1) and 54954.2(d)

5 California Government Code section 54960.1(d)(1)

6 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262

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

8 ___ Ops.Cal.Atty.Gen.___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8

9 California Government Code section 54954.2(a)(1)

10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

11 California Government Code section 54954.1

12 California Government Code sections 54956(a) and (c)

13 California Government Code section 54955

14 California Government Code section 54954.2(b)(3)

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

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

20 California Education Code section 35145.5

21 California Government Code section 54954.6

22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)

23 California Government Code section 54954.2(b)

24 California Government Code section 54954.2(a)(2)

25 California Government Code section 54953.3

26 California Government Code section 54961(a); California Government Code section 11135(a)

27 California Government Code section 54952.2(c)(2)

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

30 California Government Code section 54953(c)(2)

31 California Government Code section 54957.9.

32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption).

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

44 California Government Code section 54954.3(b); Chaffee v. San Francisco Public Library Com. (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

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Chapter 5

CLOSED SESSIONS

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CLOSED SESSIONS

A closed session is a meeting of a legislative body conducted in private without the attendance of the public or press. A legislative body is authorized to meet in closed session only to the extent expressly authorized by the Brown Act.[1]

As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. As an example, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, although the Brown Act does authorize closed sessions related to specified types of contracts (e.g., specified provisions of real property agreements, employee labor agreements, and litigation settlement agreements),[4] the Brown Act does not authorize closed sessions for other contract negotiations.

PRACTICE TIP: Some problems over closed sessions arise because secrecy itself breeds distrust. The Brown Act does not require closed sessions and legislative bodies may do well to resist the tendency to call a closed session simply because it may be permitted. A better practice is to go into closed session only when necessary.

Agendas and reports

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly agendized as a closed session item or unless it is properly added as a closed session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample

agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.[8]

Following a closed session, the legislative body must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.[9] The announcements may be made at the site of the closed session, so long as the public is allowed to be present to hear them.

If there is a standing or written request for documentation, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. If substantive amendments to a contract or settlement agreement approved by all parties requires retyping, such documents may be held until retyping is completed during normal business hours, but the substance of the changes must be summarized for any person inquiring about them.[10]

The Brown Act does not require minutes, including minutes of closed sessions. However, a legislative body may adopt an ordinance or resolution to authorize a confidential "minute book" be kept to record actions taken at closed sessions.[11] If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.[12] A court may order the disclosure of minute books for the court's review if a lawsuit makes sufficient claims of an open meeting violation.

PRACTICE TIP: Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session if not substantially compliant.

Litigation

There is an attorney/client relationship, and legal counsel may use it to protect the confidentiality of privileged written and oral communications to members of the legislative body — outside of meetings. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.[13]

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.[17] In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda in order to be certain that it is being done properly.

Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

Q. May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[19]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[20] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff.

Anticipated initiation of litigation by the local agency

A closed session may be held under the exception for the anticipated initiation of litigation when the legislative body seeks legal advice on whether to protect the agency's rights and interests by initiating litigation.

Certain actions must be reported in open session at the same meeting following the closed

session. Other actions, as where final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[21] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[22] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[23]

Q. May other terms of a real estate transaction, aside from price and terms of payment, be addressed in closed session?

A. *No. However, there are differing opinions over the scope of the phrase "price and terms of payment" in connection with real estate closed sessions. Many agency attorneys argue that any term that directly affects the economic value of the transaction falls within the ambit of "price and terms of payment." Others take a narrower, more literal view of the phrase.*

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern[24] and the names of the parties with whom its negotiator may negotiate.[25]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.

"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."

"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."

A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.

Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[27] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[28] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[29] That authority may be delegated to a subsidiary appointed body.[30]

PRACTICE TIP: Discussions of who to appoint to an advisory body and whether or not to censure a fellow member of the legislative body must be held in the open.

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[31] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[32] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[33] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[34]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[35]

Q. Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?

A. *No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.*

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[36] An incorrect agenda description can result in invalidation of an action and much embarrassment.

For purposes of the personnel exception, "employee" specifically includes an officer or an independent contractor who functions as an officer or an employee. Examples of the former include a city manager, district general manager or superintendent. Examples of the latter Include a legal counsel or engineer hired on contract to act as local agency attorney or chief engineer.

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

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

Reclassification of a job must be public, but an employee's ability to fill that job may be considered in closed session.

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[38] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[39]

> **"I have some important news to announce," said Mayor Garcia. "We've decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we've negotiated six months severance pay."**
>
> **"Unfortunately, that has some serious budget consequences, so we've had to delay phase two of the East Area Project."**
>
> *This may be an improper use of the personnel closed session if the council agenda described the item as the city manager's evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

Labor negotiations

The Brown Act allows closed sessions for some aspects of labor negotiations. Different provisions (discussed below) apply to school and community college districts.

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[40] on employee salaries and fringe benefits for both represented ("union") and non-represented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[41]

These closed sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[42]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[43] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

Employee relations for school districts and community college districts are governed by the Rodda Act, where different meeting and special notice provisions apply. The entire board, for example, may negotiate in closed sessions.

Four types of meetings are exempted from compliance with the Rodda Act:

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

Public participation under the Rodda Act also takes another form.[45] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[46] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[47]

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[48] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[49]

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

Joint Powers Authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[50]

License applicants with criminal records

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[51]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[52] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[53]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[54]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.[55]

1. A meeting to hear reports of hospital medical audit or quality assurance committees, or for related deliberations. However, an applicant or medical staff member whose staff privileges are the direct subject of a hearing may request a public hearing.
2. A meeting to discuss "reports involving trade secrets" — provided no action is taken.

A "trade secret" is defined as information which is not generally known to the public or competitors and which: 1) "derives independent economic value, actual or potential" by virtue of its restricted knowledge; 2) is necessary to initiate a new hospital service or program or facility; and 3) would, if prematurely disclosed, create a substantial probability of depriving the hospital of a substantial economic benefit.

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[56]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

PRACTICE TIP: Meetings are either open or closed. There is nothing "in between."[62]

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions.[63]

Q. May the lawyer for someone suing the agency attend a closed session in order to explain to the legislative body why it should accept a settlement offer?

A. *No, attendance in closed sessions is reserved exclusively for the agency's advisors.*

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[64] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[65] Only the legislative body acting as a body may agree to divulge confidential closed session information; regarding attorney/client privileged communications, the entire body is the holder of the privilege and only the entire body can decide to waive the privilege.[66]

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,[67] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[68] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.[69]

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

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure: 1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; 2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or 3) is information that is not confidential.[70]

The interplay between these possible sanctions and an official's first amendment rights is complex and beyond the scope of this guide. Suffice it to say that this is a matter of great sensitivity and controversy.

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the City Council in closed session that must be reported publicly.[71] The second comment to the property owner is not — disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

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

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

14 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).

15 82 Ops.Cal.Atty.Gen. 29 (1999)

16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471

17 "*The Brown Act,*" California Attorney General (2003), p. 40

18 California Government Code section 54956.9(g)

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

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

23 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan Incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner and timing of consideration and other items that cannot be disclosed without revealing price and terms).

24 73 Ops.Cal.Atty.Gen. 1 (1990)

25 California Government Code sections 54956.8 and 54954.5(b)

26 California Government Code section 54957.1(a)(1)

27 California Government Code section 54957(b)

28 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

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

30 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty. Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.

31 California Government Code section 54957(b)(3)

32 88 Ops.Cal.Atty.Gen. 16 (2005)

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

34 California Government Code section 54957(b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges, when there was a public evidentiary hearing prior to closed session).

35 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87

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

37 California Government Code section 54957

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

39 California Government Code section 54957.1(a)(5)

40 California Government Code section 54957.6

41 California Government Code section 54957.6(b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not "employees" of the district).

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)

43 California Government Code section 54957.1(a)(6)

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

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

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

62 46 Ops.Cal.Atty.Gen. 34 (1965)

63 82 Ops.Cal.Atty.Gen. 29 (1999)

64 Government Code section 54963

65 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also California Government Code section 54963.

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

67 80 Ops.Cal.Atty.Gen. 231 (1997)

68 76 Ops.Cal.Atty.Gen. 289 (1993)

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

Chapter 6

REMEDIES

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REMEDIES

Certain violations of the Brown Act are designated as misdemeanors, although by far the most commonly used enforcement provisions are those that authorize civil actions to invalidate specified actions taken in violation of the Brown Act and to stop or prevent future violations. Still, despite all the safeguards and remedies to enforce them, it is ultimately impossible for the public to monitor every aspect of public officials' interactions. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation

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

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites to the wrong Brown Act section, but adequately advises the public that the Board will meet with legal counsel to discuss potential litigation in closed session;[2]
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.[3] The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days. The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed.

Although just about anyone has standing to bring an action for invalidation,[4] the challenger must show prejudice as a result of the alleged violation.[5] An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.[6]

Applicability to Past Actions

Any interested person, including the district attorney, may file a civil action to determine whether past actions of a legislative body occurring on or after January 1, 2013 constitute violations of the Brown Act and are subject to a mandamus, injunction, or declaratory relief action.[7] Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a "cease and desist" letter to the legislative body, clearly describing the past action and the nature of the alleged violation.[8] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[9] If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, a lawsuit may be filed within 60 days.[10]

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[11] The unconditional commitment must be substantially in the form set forth in the Brown Act.[12] No legal action may thereafter be commenced regarding the past action.[13] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[14]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[15]

PRACTICE TIP: A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and start over, or reaffirm the action if the local agency relied on the action and rescinding the action would prejudice the local agency.

Civil action to prevent future violations

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

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body of a local agency;
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body;
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law; or
- Compel the legislative body to tape record its closed sessions.

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[16] Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.[17]

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to tape record its future closed sessions. In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the tapes if there is good cause to think the Brown Act has been violated, and make public the relevant portion of the closed session recording.

Costs and attorney's fees

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[18] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[19]

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

Criminal complaints

A violation of the Brown Act by a member of the legislative body who acts with the improper intent described below is punishable as a misdemeanor.[20]

A criminal violation has two components. The first is that there must be an overt act — a member of a legislative body must attend a meeting at which action is taken in violation of the Brown Act.[21]

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

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

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

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

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

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

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

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

Updates to this publication responding to changes in the Brown Act or new court interpretations are available at **www.cacities.org/opengovernment**. A current version of the Brown Act may be found at **www.leginfo.ca.gov**.

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