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ADVISORY BODIES HANDBOOK

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SECTION I

WELCOME!

Thank you for your interest in serving on one of our citizen advisory bodies, and congratulations for volunteering your time and skills to help us improve your community.

Serving on one of the Town commissions, committees, boards, or groups can be a fascinating and rewarding experience. These advisory bodies are charged with formulating new ideas, information gathering, receiving public testimony and comments, analyzing complex issues, and making recommendations on specific projects and broad policy – all toward helping the Town Council make better-informed decisions.

The members of the Town Council and staff look forward to your contributions as we work in partnership to provide efficient municipal services responsive to local needs. The Town Council hopes your experience will be stimulating, enjoyable, and fulfilling.

This handbook is designed to provide the basic protocols that apply generally to all Town commissions and committees, such as the open meeting law commonly known as the “Brown Act.” Orientation is an active process and includes initial meetings with a staff liaison who will assist you in identifying the scope and parameters of your duties and responsibilities, brief you on current business items, and provide you with foundational documentation to help you quickly adapt to your new role. Learning your role and developing an effective voice takes time and familiarity. We hope this handbook will assist you towards a satisfying and productive experience.

Again, thank you for participating in our democratic process. The volunteer spirit and community participation of Mammoth Lakes’ citizens make this a wonderful place to live, work, and play.

SECTION II

YOUR GOVERNMENT

The Town of Mammoth Lakes is a general law city operating under a Council/Manager form of government with the Town Council acting as the legislative body of the Town. The Town Council is comprised of five elected positions. Elections are staggered every two years with each Councilmember serving a four-year term. Each year, typically at the second meeting in June, the Council selects two of its members to serve one-year terms as Mayor and Mayor Pro Tem.

OPERATIONAL DEPARTMENTS

The Town Council appoints the **Town Manager**, who is responsible for the day-to-day operations of the Town. The Town Manager's duties include appointing Department Heads, who are responsible for the day-to-day operations of their departments.

The Town Council also appoints a **Town Attorney**, responsible for ensuring that Town business is conducted in conformance with appropriate laws and statutes.

The **Town Clerk** prepares Council agendas and records the minutes, conducts Town elections, maintains Town records, administers the advisory body appointment process, codifies ordinances, receives claims against the Town, coordinates the posting and advertising of legal publications, administers oaths, and serves as secretary to the Town Council.

The **Finance Department**, under the direction of the Administrative Services/Finance Director, collects money, pays bills, controls assets and financial operations, supervises cash management, provides centralized accounting, and provides for the framework for financial planning. The department is responsible for administering business licenses and the Transient Occupancy Tax levied on transient rentals.

The **Human Resources Manager**, under the direction of the Administrative Services/Finance Director, supervises the recruitment, testing, classifying, evaluating, and training of employees and handles insurance and liability issues for the Town.

The **Planning Manager** is charged with managing two divisions:

The **Building Division** provides plan checking, permitting, and inspection services for new construction, additions, and remodels within the Town of Mammoth Lakes. The Division is also responsible for enforcement of zoning and municipal codes, conditions of approval, and initiation of procedures to abate violations of a wide range of local ordinances and State and local regulations.

The **Planning Division** is responsible for the creation and implementation of long-range plans for the Town's growth and development, consistent with

approved planning principles and State law. The division reviews development projects to ensure consistency with Town policies and local, State, and federal law, including environmental review.

The **Police Chief** directs a department which is responsible for public safety within the Town boundaries, including Mammoth Yosemite Airport.

The **Public Works Director/Town Engineer** is charged with managing five divisions:

The **Engineering Services Division** is responsible for reviewing development-related applications; designing and building major projects supported by development impact fees, grants, and assessment districts; and handling special projects such as special use permits and master plans.

The **Maintenance Division** operations include snow removal, street repair, traffic signal and street light maintenance, and maintenance responsibilities for all Town facilities.

The **Garage Services Division** is tasked with vehicle repair, vehicle replacement, and the sale of decommissioned vehicles. The division services all Town-owned equipment as well as vehicles of the Fire District, Mono County Schools, and Mammoth Unified School District.

The **Airport Department** is responsible for overseeing the planning, construction, and development of Mammoth Yosemite Airport facilities capable of supporting commercial air service by regional-type aircraft, and executing the Airport's business plan to ensure the long-term financial success of the Airport and the economic sustainability of the Town.

The **Transportation Department** is responsible for planning, developing, and operating year-round, public transportation for visitors and residents of the Town of Mammoth Lakes.

The **Parks and Recreation Director** is responsible for developing adult and youth recreation programming, producing the activities guide, overseeing the youth funding program, pursuing grants, and coordinating the use of the Town's parks and recreation facilities and equipment.

The **Parks Division** is responsible for the day-to-day maintenance of all of the Town's parks and recreational facilities, including the trails system, overseeing the landscaping maintenance for Main Street and Old Mammoth Road, and overseeing the snow removal for Town sidewalks.

SECTION III

ADVISORY BODY 101

TOWN COUNCIL PHILOSOPHY ON CITIZEN ADVISORY BODIES

Policy for the Town is determined by the Town Council; however, Town decision making benefits from the advice and counsel of its citizens. For these reasons, the Town Council has established a number of ongoing boards and commissions, as well as issue-specific committees and task forces to provide input and recommendations to the Town Council. Because of the nature of these advisory bodies, they can serve as the eyes and ears of the Council for issues and matters that otherwise might not receive the attention they deserve.

These advisory bodies have been created by either the adoption of minute orders or Resolutions (policy) or Ordinance (law). Some bodies are considered permanent and others may be temporary, remaining in effect until their particular task is completed. These bodies are also considered “legislative bodies” as that term is defined in the State’s open meeting law, the Ralph M. Brown Act.

For the purposes of this document, the term “advisory body” will be used to represent Town boards, commissions, committees, or task forces whether permanent or temporary, decision-making or advisory, created by Town Ordinance, Resolution, or action of the Council.

OPPORTUNITIES FOR SERVICE

Interested individuals may apply for appointment to any of the following Town advisory bodies:

- Board of Appeals/Building Advisory Committee
- Planning and Economic Development Commission
- Recreation Commission

ELIGIBILITY REQUIREMENTS/QUALIFICATIONS

The Town of Mammoth Lakes encourages participation of a wide variety of its citizens through service on advisory bodies. Unless specified, there is no special education, training, or background required for appointment. With the exception of the Recreation Commission, which has stricter requirements, a majority plus one member of all advisory body members must be residents and registered voters of the Town of Mammoth Lakes. Applicants must be at least 18 years of age at the time of appointment. Applicants shall commit to meet the minimum attendance requirements.

APPOINTMENT PROCESS

Each person seeking appointment or re-appointment to an advisory body must obtain and file the “Application for Public Service Appointment” with the Office of the Town Clerk. Applications are only accepted during the recruitment process for existing or imminent vacancies.

Applicants should become familiar with the area of responsibility of the advisory body and attend at least one meeting thereof prior to interviewing with the Council.

The Town Council, or a subcommittee thereof, typically interviews applicants for appointment or re-appointment during a study session, regular, or special meeting. At the same or subsequent meeting, the Town Council makes appointments by publicly ranking the persons favored for membership. Those applicants with the highest overall rankings are appointed by action of the Town Council.

Applicants not appointed will be so advised.

As a general policy, an applicant shall not be appointed to serve on more than one advisory body, except that a member may also serve on technical, special purpose, or ad hoc committees at the same time. If appointed to another “permanent” advisory body, the member is understood to have vacated his/her seat on the first permanent body upon being appointed to the second. An exception to this rule would be when the membership of an advisory body is specified to include representatives from other advisory bodies.

ORIENTATION

After the Town Council makes the appointments, the department serving as staff support to a particular advisory body will coordinate and conduct an orientation with new appointees. Before or during that orientation, support staff will provide relevant documentation and background information about the specific advisory body upon which the new appointee shall serve.

OATH OF OFFICE

Following appointment, the Town Clerk will administer the Oath of Office, either at a meeting of the body or in the Office of the Town Clerk. The Oath is attached as Appendix C.

TERMS OF OFFICE

Terms of office are for four years and expire on July 31st of even numbered years. The terms are staggered to encourage a mix of policy continuity and history while allowing time for new members, with new and different points of view, to be integrated into the activities of the Board or Commission.

A mid-term appointment to a vacant seat on an advisory body will fill that seat until the expiration of the seat's term.

REMOVAL FROM OFFICE

Any member of a Board or Commission may be removed from office at any time, with or without cause, by a majority of the Town Council in open session.

If a Board or Commission member absents himself/herself, without advance permission of the Board or Commission, from three consecutive regular meetings or from twenty-five percent of the duly scheduled meetings of the Board or Commission within any fiscal year, his/her office shall thereupon become vacant and shall be filled as any other vacancy.

VACANCIES

Seats become vacant in two ways:

1. Expiration of term.
2. Resignation or removal prior to end of term.

The Town Clerk's office will post and publish a notice of vacancy and the appointment shall be made consistent with the appointment process.

SECTION IV

ADVISORY BODIES

PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

Purpose. The Planning and Economic Development Commission was created by Ordinance No. 84-04 in 1984 to advise the Town's Planning Department (now Community and Economic Development Department) and the Town Council concerning planning, proposed development, and other matters relating to land use. The Planning and Economic Development Commission is staffed by and works closely with the Community and Economic Development Department.

Members – Terms. The Planning and Economic Development Commission consists of five members. Members serve a term of four years. Members are eligible for re-appointment. No term limits apply to the Planning and Economic Development Commission. The Chair and Vice Chair are selected in July of each year and serve a one-year term in their respective roles.

Functions, powers, and duties. The Planning and Economic Development Commission performs the following functions as stipulated by the Planning and Zoning Law of the State of California (commencing with Government Code Section 65000), said duties include:

1. Prepare, periodically review, and revise as necessary, the general plan.
2. Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
3. Annually review the capital improvement program of the Town and the local public works projects of other local agencies for their consistency with the general plan.
4. Endeavor to promote public interest in, comment on, and understanding of the general plan, and regulations relating to it.
5. Consult and advise public officials and agencies, public utility companies, civic, educational, professional, and other organizations and citizens generally concerning implementation of the general plan.
6. Promote the coordination of local plans and programs with the plans and programs of other public agencies.

7. Provide other functions as the Town Council requests, including conducting studies and preparing plans other than those required or authorized by the Planning and Zoning Law.

Meetings. Regular meetings are held on the second Wednesday of the month at 2:00 p.m. in the Council Chamber/Suite Z, 437 Old Mammoth Road.

RECREATION COMMISSION

Purpose. The Recreation Commission was created by Ordinance No. 10-11 in 2010 as a body of citizens appointed to advise the Town Council on all matters pertaining to parks, public recreation, and recreation facilities. The Commission is staffed by and works closely with the Recreation Department.

Members - Terms. The Recreation Commission consists of five members, as determined by the Town Council. At least four members must be Town residents and registered voters. One member may reside outside of the Town but between June Lake and Tom's Place. Members serve a term of four years. Members are eligible for re-appointment. No term limits apply to the Recreation Commission.

Functions, powers, and duties. The Recreation Commission performs the following functions as stipulated by Municipal Code Section 2.40.040, including:

1. Make recommendations to the Department Director (or designee) on funding priorities related to the department budget.
2. Serve as a liaison between recreation service providers and users, and the Town.
3. Advise the Town Council and the Town Manager in all matters pertaining to parks, recreation, facilities, trails, special events, and other associated activities as prescribed by ordinances or by Town Council action.
4. Aid and participate in the advancement and coordination of recreation services with other governmental agencies, non-governmental organizations, civic groups, volunteer organizations, and the private sector.
5. Formulate rules and regulations with respect to use and conduct in parks and other recreation areas.
6. Regularly review surveys provided by the Department Director (or designee) of the population of Mammoth Lakes, to ensure that parks, recreation, facilities, trails, and special event needs are being met.

7. Determine the recreational capital needs of the community, after review of recommendations by the Department Director (or designee), for consideration in the Town's Master Facility and Capital Improvement Program process.
8. Conduct public hearings related to land acquisition for recreation purposes, subject to Town Council approval.
9. Conduct public hearings and make decisions, subject to appeal to the Town Council, relating to park and facility design and development.
10. Provide input to contract professionals, in conjunction with the Department Director (or designee), to assist in the design of facilities approved for construction through the budget process, subject to appeal to the Town Council.
11. Receive donations, contributions, and other gifts to be used for parks and recreation purposes, but all money so received by it shall be deposited in a special parks and recreation account. Moneys in such an account shall be expended only for parks and recreation purposes, including capital expenditures as well as current operating expenses.

Meeting. Regular meetings are held on the first Tuesday of the month at 9:00 a.m. in the Council Chamber/Suite Z, 437 Old Mammoth Road.

BOARD OF APPEALS/BUILDING ADVISORY COMMITTEE (BOA/BAC)

Purpose. The Board of Appeals and the Building Advisory Committee were initially formed as separate bodies by minute action of the Town Council in 1984. The two bodies were subsequently merged by the Town Council into a single body in 1985 by minute action of the Town Council. Rules of procedure for the group were adopted by the Town Council in 1987. The BOA/BAC serves primarily as an advisory body to the Building Official, who also staffs the group. When needed, the group provides advice on specific building issues to the Town Council. The group also functions as an appeal board for those appealing orders, decisions, or determinations made by the Building Official in particular subject areas.

Members – Terms. The Board of Appeals/Building Advisory Committee consists of seven members who are “qualified by knowledge, experience, and training regarding construction and code compliance and shall pass judgment upon matters pertaining to same.” Members serve a term of four years. Members are eligible for re-appointment. No term limits apply to the Board of Appeals/Building Advisory Committee.

Functions, powers, and duties. The Board of Appeals/Building Advisory Committee performs the following functions as stipulated by its Rules of Procedure adopted by the Town Council in 1987, said duties include:

1. Hear and decide appeals of orders, decisions, or determinations made by the Building Official relative to the application and interpretation of codes and/or related Town ordinances. The Board shall have no authority relative to interpretation of the administrative provisions of the Uniform Building Code nor shall the Board be empowered to waive requirements of this Code.
2. Act in an advisory capacity to the Town Council and/or Mammoth Lakes Building (Division). The Board shall provide in writing interpretations and opinions on building code items not specifically addressed in the Uniform Building Code and issue interpretations and opinions based on conditions (geographical or climatic) unique to the Mammoth Lakes area.

Meetings. Regular meetings are held quarterly, usually on the second Wednesday of the months of February, May, August, and November at 2:00 p.m. in the Council Chamber/Suite Z, 437 Old Mammoth Road. At their first meeting of each year, the group establishes their schedule of meetings.

SECTION V

GUIDELINES

RESPONSIBILITY OF BOARD, COMMISSION, AND COMMITTEE MEMBERS

One of the first and most important responsibilities of a board, commission, or committee member is to learn about the group's scope of responsibility and general operating procedures. This knowledge base provides each individual board, commission, and committee member with the ability to understand the issues at hand and exercise good judgment in giving advice to the Town Council. New board, commission, and committee members are encouraged to schedule an appointment with the appropriate Town staff member so that they can learn some of the basic information and ask questions prior to attending their first meeting.

Each board, commission, and committee member is responsible for considering the issues as they relate to and impact the Mammoth Lakes community as a whole. It is important that members be able to set aside personal biases in an effort to understand how policies will affect all segments of the Town.

CONFLICT OF INTEREST PROHIBITIONS

Members of Mammoth Lakes' boards, commissions, and committees should be aware of the need to avoid conflicts of interest. Conflict of interest standards, as included in common law, statute, and local policy, are generally applicable to all boards, commissions, and committees. Additionally, members of certain bodies are subject to filing requirements regarding economic interests.

The Political Reform Act of 1974 (California Government Code Section 87100 et. seq.), which was enacted by the voters of California by initiative, prohibits financial conflicts of interest on the part of public officials. The Act provides that no local official, including board, commission, and committee members, shall make, participate in making, or in any way attempt to use his or her official position to influence a Town decision if the official knows, or has reason to know, that the decision will have a material financial effect on his or her interests or those of his or her family. The State Fair Political Practices Commission (FPPC) enforces the State conflict of interest regulations. Mammoth Lakes' board, commission, and committee members may seek the advice of the FPPC regarding conflict of interest issues and concerns; however, only a formal advice letter from the FPPC will insulate individuals from FPPC enforcement actions.

The Political Reform Act of 1974 includes requirements for filing of periodic statements of economic interests for members of the Planning Commission. Members of the Board of Appeals/Building Advisory Committee and Recreation Commission are subject to Town filing requirements. The Town Clerk routinely advises the members of Boards and Commissions of filing requirements and deadlines and will inform other advisory body members of any changes that would affect them.

Government Code Section 1090, which is a separate law from the Political Reform Act provisions, states that any Town officer or employee (which includes appointees of the Town) shall not be financially interested in any contract made by any body or board of which they are a member.

A conflict of interest may also exist under common law doctrines. The common law doctrine against conflict of interest prohibits public officials from placing themselves in a position where their private/personal interest may conflict with their official duties. While the Political Reform Act focuses on financial conflicts of interest, the common law conflict of interest doctrine extends to non-economic conflicts of interest. Decisions which your committee, commission, or body makes are expected to be the result of disinterested and unbiased decision-makers.

In the event a member of a body has a conflict of interest, the member should generally recuse him or herself from considering the issue. However, as there are exceptions to this general rule and special procedures that apply, please notify Town staff as soon as possible of a potential conflict. In addition, Town staff can help answer questions regarding if a particular situation is actually a conflict.

ETHICS

The Mammoth Lakes Town Council encourages the embracing of this code to guide board, commission, and committee members regarding the Town Council's expectations of conduct.

1. **Town Policies.** Stand behind the board, commission, or committee's spokesperson and leadership. Diversity of viewpoints and backgrounds should be respected. Individuals may speak or write individually, but should note that they are speaking or writing on their own behalf.
2. **Build Teamwork.** Be open with ideas, feelings, and attitudes. Seek and gain an honest evaluation of your ideas and recruit assistance in implementing them.
3. **Show Respect, Effective Communication, and Leadership.** Respect your colleagues. For criticism to be effective, it is best to be constructive. Embarrassing a colleague or staff in public will likely be counter-productive. Follow legitimate channels of communication with staff. Remember that staff performance is a reflection of your leadership abilities; work together. Treat staff with respect. Do not criticize staff at public meetings.
4. **Try to Reach Decisions by Consensus.** Better decisions can be made by a level of consensus. Openly voice your individual goals and work to draft a solution to meet the largest number of goals.

5. **Value Your Vote.** You were appointed to express your opinions by voting on matters. Vote with the Mammoth Lakes community and your conscience in mind. If there are conflicting goals, vote for the higher purpose. If you have a conflict of interest, abstain from voting. Because of the value of your vote, abstentions in the absence of a conflict of interest are discouraged. Except where an abstention is due to a declared conflict of interest, failure of a board, commission, or committee member to vote shall be recorded with the prevailing vote on the matter.

6. **Give Political Assent: Do Not Misrepresent the Group.** Accept the results of a board, commission, or committee vote. Respect the decision of the group. Do not use your official capacity, unless specifically designated and authorized by your advisory board to represent yourself speaking or writing on behalf of the board, commission, or committee. Do not suggest you represent the group (for example, by using the name of the board, commission, or committee) or use your appointed status as a means of attempting to create an impression or influence others.
 - a. If you are a member of the Planning Commission, do not take an advocacy position before the Town Council or before any other public body on development projects that have or will come before the Commission. Planning Commission members must refrain from such action because 1) the matter may be referred by the Town Council back to the Commission for comment, recommendation, and/or action, and such advocacy creates a serious procedural due process conflict; and 2) it is not recommended that a Town Council appointee take a public advocacy position contrary to the decision of the Town Council.

7. **Respect Non-Partisanship.** The strength of local government in California is that it is non-partisan; be dedicated to the preservation of this system.

8. **Brown Act.** Be forthright in support and adherence to the Brown Act.

9. **Conflict of Interest.** If disqualified by reason of any conflict of interest in any matter, do not, in your official capacity, participate in any discussion in any way or comment on any matter in any way to any person, including any other commission member, councilmember or staff, and do not vote on such a matter.

REPRESENTING THE BOARD, COMMISSION, OR COMMITTEE

When commenting on matters relating to your official capacity as a board, commission, or committee member, you should make every effort to interpret and represent the view of the whole group. You should not represent your personal views or recommendations

as those of the entire group unless a majority of the board, commission, or committee has voted to approve the recommendation. As noted above, if you express views that have not been approved by a majority of the group, you should make it clear that you are representing yourself as an individual and not the board, commission, or committee on which you serve.

As an individual board, commission, or committee member, you have the right to speak and write publicly on issues unrelated to your official appointment. However, you should recognize that, as an appointee, you are in a highly visible position in the community. You should avoid referring to your official position when addressing the public as a citizen on an unrelated issue. If a question is raised, you should clarify that your comments are made as an individual citizen and not as a board, commission, or committee member.

RELATIONS WITH TOWN COUNCIL, STAFF, AND OTHERS

As volunteer participants in Mammoth Lakes' municipal government, board, commission, and committee members interact with a variety of people, including elected officials, Town staff, the media, and the general public. Following are some guidelines regarding relationships with these different groups of people.

- 1. Relationships with the Town Council.** The Town Council is the elected legislative body of the Town and is responsible for making all policy decisions. The Town Council relies on the input of boards, commissions, and committees to increase the variety of viewpoints and talents brought to bear on Town issues. However, it is the Town Council's role to consider the broader context and weigh the trade-offs involved in a particular policy decision. Consequently, the Town Council may accept, reject, or modify recommendations made by Town advisory bodies. As a board, commission, or committee member, you should remember that your role is advisory only and that, even in situations where your recommendations are not followed, your participation and input into the process is valuable. The role of the advisory body in providing additional public input to the Town Council is especially important.
- 2. Relationships with Town staff.** The staff liaisons to Town boards, commissions, and committees assist the advisory body in accomplishing its functions. Staff representatives conduct research and provide relevant information that enhances the work products and recommendations of the particular advisory body. Town staff members are eager to work with Town advisory body members in exploring issues and evaluating solutions to Town problems, as advisory bodies provide staff with excellent resources for obtaining community input and ideas. As an advisory board member, you should be aware of staff time involved in preparing reports and studies and should make sure that all requests made of staff are consistent with the charge of your particular board, commission, or committee. Advisory body members

should not ask staff for individual reports, favors, or special consideration. It is also important to remember that while the staff is charged with assisting advisory bodies in accomplishing their functions, Town staff members are responsible to the Town Manager and the Town Council, and are tasked with carrying out the workplan established by the Town Council and staff as part of the annual budget process. They are not employees of the particular board, commission, or committee. There may be occasions when staff recommendations will vary from the recommendation of the board, commission, or committee.

3. **Relationships with Fellow Board, Commission, or Committee Members.** Cooperation among members plays an important role in the success of Town boards, commissions, and committees. To build consensus around common goals and objectives, members should define the issues and work to reconcile differing viewpoints. When advisory body members interact positively, the group as a whole will be more effective. Important points to keep in mind when working with other group members are as follows:
 - Always respect the other individual's viewpoint, even though it may be different from your own.
 - Be courteous by allowing other members adequate time to present their views fully before making comments.
 - Build integrity in all decisions by being open and honest at all times.
 - Welcome new members and help them to become acquainted with the board, commission, or committee.
 - Accept responsibility, voice opinions, and be fair and factual.
 - Don't allow differences of opinion on prior decisions bias decisions on current issues.
4. **Relationships with the General Public.** The fundamental purpose of advisory body meetings are to provide a forum for open discussion on specific issues in a setting that is more informal than a Town Council meeting and to inform the public of what the group is doing. Good relations with the public are vital to accomplishing these goals. Boards, commissions, and committees should welcome citizen input as a valuable resource to the group, to understanding community concerns, and to gauge community reaction to alternative courses of action under consideration. This builds public trust and credibility.
5. **Relationships with the Media.** In most situations, the board, commission, or committee chair is designated as the group's official spokesperson. However,

reporters may seek out other advisory board members for comment. If you are contacted, please remember the important role the press plays in informing the public and remember that most reporters do want to write accurate, balanced stories and that they usually face rigid deadlines. When making statements to the press, you should remember the following:

- Indicate if the board, commission, or committee actions are recommendations, and if so, that final action will be taken by the Town Council.
- Keep your comments factual and try to avoid giving “opinions.” If given, you should identify them as such.
- Never volunteer or release information affecting the Town Council before the Town Council hears the information first from Town staff.
- If you cannot answer a question, say so and refer the reporter to another group member or to staff for an answer. There is nothing wrong with not knowing something; however, real damage can be done by giving inaccurate information.
- Be honest.
- Be positive in your comments and keep in mind your group’s goals.
- Go over your comments with reporters to ensure an accurate story. If the article is printed with serious errors, call the reporter so that a correction can be printed. If the article is fair and accurate, make a special effort to thank the reporter.
- Remember that you do not have to talk if you do not want to and that there is no such thing as “off the record.”

ATTENDANCE

Attendance at scheduled meetings is critical to the overall performance of the board, commission, and/or committee. Excessive absenteeism becomes an impediment to the overall success of the Town in serving the community.

FIVE GOLDEN RULES TO HELP YOU BECOME AN EFFECTIVE BOARD, COMMISSION, OR COMMITTEE MEMBER

1. **Represent the Whole Town.** As a board, commission, or committee member, you have been appointed to represent the public interest and not a special group or interest. The question, “What is best for the entire Mammoth

Lakes Community” should take precedence over, “What is best for my special interest group?”

2. **Keep the Lines of Communication Open.** As a board, commission, or committee member, you are in the unique position of serving as a liaison between the Town and its citizens. You are encouraged to explain and promote policies and programs established by the Town Council within the scope of interest of your group. It is equally important for you to transmit back to the Town Council the reactions and opinions of the citizens as they relate to these policies and programs. In doing so, it is very important that you do not substitute your own opinions for those of the general public.
3. **Do Your Homework and Be Thorough in Making Recommendations.** As a board, commission, or committee member, you should be prepared to discuss the issues that are on the meeting agenda. In addition to reading the agenda packet and materials, your preparation may include discussions with staff, visiting the location of a proposed project, or reviewing prior Town Council actions. You should make every effort to remain objective during the fact-finding phase and to thoroughly evaluate all aspects of an issue before making a recommendation.
4. **Be Conscious of the Relationship with the Town Council and Staff.** Successful relationships with the Town Council and staff are basic for the successful operation of an advisory body. It is important that you respect the authority of those who, in the end, will be charged with the responsibility for actions taken by the Town. Further guidance on these relationships is provided in detail earlier in this Section.
5. **Establish a Good Working Relationship with Other Commission Members.** As described in detail earlier in this Section, a positive relationship among all of the members of a board, commission, or committee will help to ensure the success of the group.

SECTION VI

MEETING PROTOCOL

AGENDA PREPARATION AND POSTING

Agendas and staff reports for board, commission, and committee meetings are prepared by staff in accordance with the Town's agenda preparation guidelines and the Ralph M. Brown Act, which is explained in detail in the next chapter.

Agendas for regular meetings must be posted no later than 72 hours prior to the meeting date/time. Agendas for special meetings must be posted no later than 24 hours prior to the meeting date/time. Your staff liaison will ensure that you are provided an agenda packet in a timely fashion prior to each board, commission, or committee meeting. The agenda packet will include the posted meeting agenda notice, staff reports and recommended actions, and general information. Once the agenda is posted and distributed to a majority of board, commission, or committee members, it becomes a public record.

PREPARATION FOR MEETINGS

Be prepared. Thoroughly review the agenda packet, including agenda reports and recommended actions, and any other materials *before* the meeting. The issues that come before boards, commission, and committees are important to the community as a whole and demand your consistent attention.

Some questions to ask yourself may include:

- What is the history behind this item?
- What are some public concerns and what are the long-term interests of the community?
- What are we trying to accomplish and what are the benefits/drawbacks?
- What guidance can be found in our foundational documents?

If you have additional questions regarding the agenda or agenda report, contact your staff liaison before the meeting for clarification or additional information.

Keep an open mind. An objective, balanced, and receptive approach will help you assess the facets of a given issue, and evaluate new ideas. When receiving written and oral public testimony, it will be necessary to discern between fact and opinion, as well as between those concerns that are relevant and those that are secondary to the issue at hand. Keeping an open mind will make it easier for you to understand all sides of an issue before you make a judgment or take a position.

Strive to appreciate the differences in approach and points of view. Diversity of ideas sustains a thoughtful dialogue and a vibrant community. Likewise, take care to articulate

your own ideas. Remember that your individual voice is a critical part of the whole dialogue. Again, furthering common goals takes cooperation, flexibility, and a broad-based view of the public interest. If in doubt, return to the foundational documents to guide your understanding of the complexities of an issue.

Ask for clarification if you are unsure about something *during* the meeting. Your understanding of issues is important. Each board, commission, or committee has a Town staff liaison to provide information to assist the members throughout the decision-making process.

RULES OF DEBATE

Unless otherwise provided by law, Rosenberg's Rules of Order (Appendix A) govern the general conduct of board, commission, and committee meetings.

CHAIR

The Chair (presiding officer) may move or second a motion, and debate as Chair. The Chair is subject to the limitations of debate that are imposed on all members and shall not be deprived of any of the rights and privileges of a member.

BOARD, COMMISSION, COMMITTEE MEMBERS

Every board, commission, or committee member desiring to speak shall address the Chair, and upon recognition by the Chair, shall limit comments to the question under debate, avoiding any indecorous language and references to personalities. A member, once recognized, shall not be interrupted except in accordance with rules of parliamentary procedure (for example, point of order, parliamentary inquiry, question of privilege, or appeal of Chair's procedural ruling).

ADDRESSING THE BOARD, COMMISSION, OR COMMITTEE FROM THE FLOOR

Securing permission to speak.

Members of the public desiring to address a board, commission, or committee shall first secure permission from the Chair. Any board, commission, or committee member may also request of the Chair that a member of the public be recognized to speak. Remarks should be directed to the matter being considered.

Individuals

So that their identities are accurately reported in the record, persons addressing the board, commission, or committee are requested to give their name in an audible tone of voice. However, persons shall not be denied the opportunity to address the board, commission,

or committee because they decline to identify themselves. The time limit for public testimony shall be stated in the agenda, which is typically five minutes.

All remarks shall be addressed to the board, commission, or committee as a whole and not to any individual member or to members of the audience. No person, other than a member of the board, commission, or committee, and the person having the floor, shall be permitted to enter into any discussion without the permission of the Chair.

While board, commission, or committee members may ask questions of a speaker, they should not debate matters with a speaker. All remarks shall be delivered in a respectful manner.

DECORUM IN MEETINGS

- Arrive promptly to ensure the meeting is called to order on time.
- Be fair, impartial, and respectful of the public, staff, and each other. Give your full attention when others speak.
- Conclude public testimony before board, commission, or committee members begin serious deliberation on an issue.
- Balance multiple views, neither favoring nor ignoring one individual or group over another. Your obligation is to represent a broad-based view of the community's long-range interests.
- Remember that your board, commission, or committee exists to take actions and/or develop recommendations to the Town Council in the interest of advancing Town Council policies and addressing community issues. It is not simply a discussion group.

ROLE OF CHAIR

The Chair shall preserve order and decorum at all meetings of the board, commission, or committee, announce the decisions taken, and decide questions of order. The Chair is responsible for ensuring the effectiveness of the group process. A good Chair balances moving the discussion forward while involving all of the board, commission, or committee members and allowing for adequate public participation. The Chair will also endeavor to end meetings at a reasonable hour. In the absence of the Chair, the Vice Chair shall act as presiding officer.

The Chair will:

- Start meetings on time and keep the agenda in mind in order to give each item sufficient time for consideration.

- Announce at the start of the meeting if the order of agenda items is to be re-arranged for convenience, for response to those attending only for certain items, or for better pacing of the agenda.
- Ensure that the public understands the nature of the issue being discussed (for example, reason for discussion, process to be followed, opportunities for public input, timeline for decision).
- Keep discussion focused on the issue at hand.
- Solicit opinions from board, commission, or committee members and encourage evaluation of new, tentative, or incomplete ideas.
- If the body's bylaws or policies impose time limits upon board members or the public, the rule may be enforced at the discretion of the Chair.
- Protect board, commission, or committee members, staff, and the public from personal attacks.
- Provide structure for addressing complicated issues.
- Refer to staff or legal counsel when technical guidance is required.
- Attempt to reach decisions expeditiously on action items. At those times when action would be premature and additional analysis is needed, the Chair will guide discussion toward a timeline or framework for responsible action.

PREPARING MOTIONS

Board, commission, and committee meetings are conducted according to parliamentary procedure. As the presiding officer, the Chair's rulings must be followed unless he/she is overruled by a majority vote of the body upon an appeal of a ruling.

When a board, commission, or committee member wishes to propose an action on a particular item on the posted agenda for the board, commission, or committee to consider, the member makes a motion.

Examples of Common Motions:

- **Delay consideration:** *"I move to continue the item until..."* (Date specific or date uncertain).
- **Close debate:** *"I call for the question."* This ends debate immediately in order to call for a motion.
- **Request more study:** *"I move to refer this to staff or (committee) for further study."*
- **Adopt a staff recommendation:** *"I move to adopt option ..."*
- **Modify staff recommendation:** *"I move to adopt the option with the following modifications..."*

Properly phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion, the member making the motion may rephrase or withdraw it.

Members may wish to write out difficult motions. If a motion gets too complicated, call a recess and have staff assist with the wording.

It is best to avoid including more than one proposal in the same motion. This is especially important when board, commission, or committee members are likely to disagree.

Any member may make a motion to bifurcate or divide a motion in order to treat each proposal as a separate motion.

A motion goes through the following steps:

1. The member asks to be recognized by the Chair.
2. The member makes the motion: *"I move that we..."*
3. Another member seconds the motion: *"I second the motion."*
4. The Chair restates the motion, or asks the recording secretary to do so, and asks for discussion on the motion.
5. When the Chair determines that there has been enough discussion, the debate may be closed with: *"I call the question."* or *"Is there any further discussion?"*
6. If no one asks for permission to speak, the Chair then puts the motion to a vote.
7. The Chair should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
8. After the vote, the Chair announces one of the following:
 - a. *"The motion carries unanimously."*
 - b. *"The motion carries ___ to ___ (identifying the number of yes and no votes)."*
 - c. *"The motion has failed."*

SECTION VII

LEGAL MATTERS

BROWN ACT

The State Legislature has declared that the actions of public bodies be taken openly and that their deliberations be conducted openly. California's Ralph M. Brown Act (found in Government Code Sections 54950 through 54961), also known as the "open meeting law," applies to all advisory bodies and requires that they:

1. Meet within the jurisdictional limits of the Town (with very limited exceptions).
2. Post the agenda 72 hours before a regular meeting, said agenda to contain a brief general description of each item of business to be transacted or discussed.
3. Hold open and public meetings.
4. Give notice of the meeting to any requesting party at least 24 hours prior to the meeting.
5. Provide in bylaws or rules for time and place of regular meetings, if regular meetings are to be held.

A meeting is defined as a gathering of a majority (quorum) of the advisory body for the purpose of discussing items before the body or conducting other business of the body. It is important to understand that the Brown Act generally prohibits any action or discussion of items not posted on the agenda.

There are special requirements for advisory body agendas:

- Regular Meetings – 72 hours in advance.
- Special Meetings – 24 hours in advance.
- Adjourned Meetings – a regular or special meeting may be adjourned to a specific time and place (usually to continue consideration of some item of business). A special notice is required and should be posted within 24 hours of adjournment.

BROWN ACT PROVIDES FOR PUBLIC COMMENTS

The Brown Act mandates that regular meeting agendas allow for two types of public comment periods. The first is a general audience comment period, where the public can comment on any item of interest that is within subject matter jurisdiction of the local agency and that is not listed on the posted agenda. In Mammoth Lakes, the "public comment" period is typically placed towards the beginning of the meeting agenda. In

addition, the public may request the opportunity to comment on individual items on the agenda, at the time the agenda item is considered by the advisory body.

The Brown Act allows for a legislative body to adopt reasonable regulations limiting total amount of time allocated for public testimony. In Mammoth Lakes, the typical time limit for speakers is five (5) minutes.

It is not permissible to prohibit public criticism of policies, procedures, programs, or services of the Town or acts or omissions of the Town. This does not mean that a member of the public may speak on “anything.” If the topic is not within the subject matter jurisdiction of the advisory body, the Chair should remind the speaker to direct his/her comments to only those subjects within the advisory body’s purview.

COMMON QUESTIONS ABOUT THE BROWN ACT

The following is intended to give advisory body members a basic understanding of the Brown Act. Please consult with staff liaison, the Town Clerk, or the Town Attorney for more specifics.

1. **What are serial meetings?** A serial meeting is a series of communications amongst a majority of members, outside of a meeting, to develop a collective concurrence as to action to be taken on an item by the members. The Brown Act strictly prohibits serial meetings. Even though a majority of members never gathers in a room at the same time, a Brown Act violation may occur if ideas are exchanged among the majority by going through any person acting as an intermediary (including staff), and/or the use of technology devices such as a telephone, answering machine, computer email, or voice mail.
2. **What are some examples of serial meetings?** The most common example of a serial meeting is a “daisy chain” where “Member A” calls or emails “Member B” and then “Member A” or “Member B” calls or emails “Member C”, and so on. Another example is the “Hubs and Spokes” situation, where some member of the public or staff (the “hub”) contacts individual body members (the “spokes”) and in the course of conversations or emails shares the views of the body members with other body members so as to establish a collective concurrence.
3. **What’s a Quorum?** A quorum is a majority (more than half) of the total number of established members of the group. A quorum must be present for any business discussion or action to take place. A quorum must be present for the duration of the meeting. If a member leaves during the meeting, resulting in the lack of a quorum, no further business may be conducted and the meeting must be adjourned. If vacancies exist on the advisory body, those vacant positions still count towards the quorum. For example, if one seat is vacant on a five-member body and two members are absent, there is not a quorum.

4. **If a member is absent, can he/she still vote?** Generally, no. Votes by proxy are not allowed. Under certain conditions, members may participate via teleconferencing. For more information on teleconferencing options and requirements, contact the staff liaison or Town Clerk.

5. **What are some exceptions to the Brown Act?** Advisory body members may attend and/or participate in the following as long as a majority of the members do not discuss amongst themselves matters that are within the subject matter jurisdiction of the advisory body:
 - Informational or educational workshops or conferences.

 - Community meetings, such as town hall meetings, workshops, forums, etc. not sponsored by the advisory body.

 - A meeting of another body of the local agency.

 - Social or ceremonial events.

6. **Can an advisory body conduct a retreat?** “Team Building” or “Goal Setting” retreats may be held, but they must be held within the Town, be properly noticed, and be open to the public.

The Legislature amends provisions in the Brown Act periodically, rendering the law increasingly complicated. It is recommended that you familiarize yourself with the provisions of the Brown Act by reviewing “Open and Public V: A Guide to the Ralph M. Brown Act,” a publication of the League of California Cities, which is included in Appendix B.

CONFLICT OF INTEREST/STATEMENTS OF ECONOMIC INTERESTS FORM 700

The Political Reform Act (PRA) was adopted by voters of California as an initiative (Proposition 9) in 1974. The Fair Political Practices Commission (FPPC) is the enforcement agency for the Political Reform Act. One of the PRA’s main purposes is to prevent financial conflicts of interest on the part of public officials. The Act requires public officials to disclose all financial interests, such as investments, interests in real estate, or sources of income, which the official may possibly affect by the exercise of his or her official duties. If a public official has a conflict of interest, the PRA may require the official to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence a government decision.

What is a Conflict of Interest?

The Political Reform Act of 1974, which is codified as Government Code Section 87100 et seq., provides that no public official at any level of State or local government shall make, participate in making, or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

ETHICS TRAINING

Assembly Bill 1234 (Government Code Section 53235) which became effective in 2006, requires the Town to provide ethics training for all members of a legislative body that receive compensation, salary or stipend, or reimbursement of expenses related to his/her official duties. The following legislative bodies are required to receive training: Town Council and Planning and Economic Development Commission. In addition members of the Mammoth Lakes Housing, Mammoth Lakes Recreation, and Mammoth Lakes Tourism Boards are contractually obligated to attend this training. Applicable officials must receive two hours of ethics training within one year of the first day of service, and subsequently at least once every two years. Ethics Training is provided by the Town every two years in even numbered years, and all board, commission, and committee members are invited and encouraged to attend the training.

HARRASSMENT TRAINING

Assembly Bill 1661 (Government Code Section 53237) which became effective in 2018, requires the Town to provide harassment training for members of a legislative body that receive compensation, salary, or stipend. The following legislative bodies are required to receive training: Town Council and Planning and Economic Development Commission. Applicable officials must receive two hours of harassment training within six months of the first day of service, and subsequently at least once every two years. Harassment Training is provided by the Town every two years in even numbered years, and all boards, commissions, and committee members are invited and encouraged to attend the training.

SECTION VIII

POLICY FOR ADVISORY COMMITTEES AND COMMISSIONS

1. **Purpose.** The purpose of Town Council-appointed advisory committees and commissions is to review and make policy recommendations to the Town Council within the scope of responsibility defined by the Town Council, and to promote increased public awareness and citizen participation in the determination of Town policies.
2. **Values:**
 - a. **Accountability:** Committees/commissions will exhibit a sense of ownership of the policy matters within their assigned scope of responsibility.
 - b. **Openness:** Committees/commissions will consider a range of views and policy options before making recommendations.
 - c. **Transparency:** Committees/commissions will share all information completely and take all actions openly.
3. **Roles:**
 - a. **Town Council Role:**
 - i. Establishes a clear purpose and scope of responsibility for the committee/commission.
 - ii. Establishes the structure, composition, and duration of the committee/commission.
 - iii. Appoints members or establishes membership criteria for the committee/commission.
 - iv. Provides staff, funding, or other resources to the committee/commission.
 - v. Receives and considers reports and recommendations from the committee/commission.
 - b. **Committee/Commission Role:**
 - i. Understands and takes ownership of the policy matters within the scope of responsibility established by the Town Council.
 - ii. Develops goals, mission statements, and a workplan consistent with the scope of responsibility of the committee/commission.
 - iii. Requests information, conducts meetings and hearings, makes field visits, and uses subcommittees to gather

adequate information in order to make informed recommendations.

- iv. Encourages public participation in the committee/commission process.
- v. Considers all points of view.
- vi. Conducts all activities in an open and transparent way.
- vii. Makes advisory reports and recommendations to the Town Council.
- viii. Attends meetings regularly and engages issues in a positive, contributory manner.

c. Staff Role:

- i. Facilitates meetings and hearings.
- ii. Provides necessary documents and information.
- iii. Prepares and presents reports.
- iv. Responds to questions and requests for information.
- v. Provides for notices, agendas, and minutes.
- vi. Helps orient and train new members.

APPENDICES

Rosenberg's Rules of Order



Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg



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 autonomy 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.

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ABOUT THE AUTHOR

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



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INTRODUCTION

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

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

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

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

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

Establishing a Quorum

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

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

The Role of the Chair

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

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

The Basic Format for an Agenda Item Discussion

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



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

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

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

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

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

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

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

This is done in one of three ways:

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

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

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

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

Motions in General

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

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

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

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

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

The Three Basic Motions

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

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



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

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

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

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

Multiple Motions Before the Body

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

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

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

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

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

To Debate or Not to Debate

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

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

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

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

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



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

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

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

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

Majority and Super Majority Votes

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

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

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

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

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

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

Counting Votes

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

The Motion to Reconsider

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

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

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

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

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



Courtesy and Decorum

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

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

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

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

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

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

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

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

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

Special Notes About Public Input

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

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

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

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



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Recognizing Conflicts of Interest

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A Guide to the Conflict of Interest Rules of the Political Reform Act

Fair Political Practices Commission
August 2015



This guide is provided by the Fair Political Practices Commission (FPPC) as a general overview of a public official's obligations under the conflict of interest rules provided for in the Political Reform Act (the Act).¹ It is intended to help the user spot situations and issues that may give rise to a conflict. The guide will provide answers to some of the more common questions:

- What is a conflict of interest under the Act?
- Who must be vigilant about conflicts of interest?
- What precautions can be taken to prevent conflicts?
- A conflict of interest exists, what now?
- Where to go for help?

A word of caution - officials should not rely solely on this guide to ensure compliance with the Act, but should also consult the statutes of the Act, the FPPC's regulations, and if necessary, seek legal advice.

What is a conflict of interest under the Act?

In 1974, the voters enacted the Political Reform Act.² In adopting the Act, the voters recognized that conflicts of interest in governmental decision-making by public officials posed a significant danger.

“The people find and declare ...

- a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them....”³

Under the Act, a public official will have a statutory conflict of interest with regard to a particular government decision if it is foreseeable that the outcome of the decision will have a financial impact on the official's personal finances or other financial interests.⁴ In such cases, there is a risk of biased decision-making that could sacrifice the public's interest in favor of the official's private financial interests. In fact, preventing conflicts of interest was of such vital importance to the voters that the Act not only prohibits actual bias in decision-making but also “seeks to forestall ... the appearance of possible improprieties.”⁵

Who must be vigilant about conflicts of interest?

Public Officials: The reach of the Act’s conflict of interest rules is commonly misunderstood or understated. The Act applies to all “public officials,” which is defined as “every member, officer, employee or consultant of a state or local government agency.”⁶

It is universally recognized that certain elected public officials, such as city councilmembers, city managers and city attorneys, must refrain from decision-making where a conflict of interest exists. These persons hold high-level positions of trust in government. However, the Act’s conflict of interest prohibition reaches much further than high-level state and local officials. The Act’s conflict of interest disclosure and disqualification rules apply to thousands of local and state public employees and officials working throughout California.

The Public: The Act relies on individual citizens to monitor the decision-making of their elected and appointed representatives to identify whether they have a conflict of interest with respect to a specific decision. Much of the enforcement of the Act’s conflict of interest provisions is based on citizen complaints.⁷

What precautions can be taken to prevent conflicts of interest?

In order to prevent a conflict of interest, a public official should: 1) identify and fully disclose the financial interests that may cause a conflict; 2) understand the different types of financial interests that may be the basis for a conflict; and 3) consider whether the decision’s effect on the official’s financial interest is reasonably foreseeable and material. Each step is discussed in greater detail below.

1. Identify and fully disclose the financial interests that may cause a conflict.

Public Officials: The most important thing an official can do to comply with this law is to recognize the types of interests from which a conflict of interest can arise. By learning to recognize these interests, an official will be able to spot potential problems and seek help from the agency’s legal counsel or from the FPPC.

In fact, officials can take steps to protect themselves and the public from conflict of interest decisions well in advance of making a specific governmental decision. The Act requires that public officials annually disclose their financial interests on a Form 700 (Statement of Economic Interests). This is a requirement because the voters who enacted the law recognized that an important purpose of the Act was to ensure adequate disclosure:

“Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”⁸

The financial interests disclosed include many of the interests that form the basis for a conflict and require disqualification under the Act. No one has a conflict of interest under the Act on general principles or because of personal bias regarding a person or subject – conflicts under the Act are based on financial interests. By thoroughly completing the Form 700, the official is on notice of the type of financial interests he or she holds that may cause a conflict of interest. If the official has no interests that governmental decisions can financially affect, the official will not have a conflict of interest.

The Public: Requiring officials to publicly disclose their financial interests allows the general public to monitor an official’s conduct. In other words, any individual citizen can obtain a copy of the Form 700 filed by their local or state official to determine whether the official has a conflict of interest with respect to a specific decision. This serves as an important enforcement mechanism for the Act’s disqualification requirements.

2. Understand the different types of financial interests that may be the basis for a conflict.

There are five types of interests⁹ that may result in disqualification:

- **Business Investment, Employment or Management.** An official has a financial interest in a business entity in which the official, or the official’s spouse, registered domestic partner, or dependent children or an agent has invested \$2,000 or more.¹⁰ An official also has a financial interest in a business entity for which the official is a director, officer, partner, trustee, employee, or holds any position of management.
- **Real Property.** An official has a financial interest in real property in which the official, or the official’s spouse, registered domestic partner, or dependent children, or an agent has invested \$2,000 or more, and also in certain leasehold interests of terms of more than a month (excluding a month-to-month lease and leases for terms of less than a month).¹¹
- **Sources of Income.** An official has a financial interest in anyone, whether an individual or an organization, from whom the official has received (or from whom the official has been promised) \$500 or more in income within 12 months prior to the decision. A “source of income” includes a community property interest in the spouse’s or registered domestic partner’s income. Therefore, a person from

whom the official's spouse or registered domestic partner receives income of \$1,000 or more, such that the official's community property share is \$500 or more, may also be a source of a conflict of interest.¹²

In addition, if the spouse, registered domestic partner or dependent children own 10 percent of more of a business, the official is considered to be receiving "pass-through income" from the business's clients. In other words, under such circumstances, the business's clients may be considered sources of income to the official as well.

- **Gifts.** An official has a financial interest in anyone, whether an individual or an organization, who has given gifts to the official that total \$460 or more¹³ within 12 months prior to the decision.
- **Personal Finances.** An official has a financial interest in decisions that affect the official's personal expenses, income, assets, or liabilities, as well as those of the official's immediate family. This is known as the "personal financial effects" rule.

Quick Tip:

Not all of the financial interests that may cause a conflict of interest are disclosed on a Form 700. A good example is an official's home. It is common for financial effects on an official's home to trigger a conflict of interest. Officials are not, however, required to disclose their home on the Form 700.¹

3. Consider whether the decision's effect on the official's financial interest is reasonably foreseeable and material.

The next steps all focus on the specific governmental decision in question. At the heart of deciding whether an official has a conflict of interest in a specific decision is determining whether an effect on the financial interest is reasonably foreseeable (might realistically happen or is too remote a possibility) and is material (financially important enough). Determining whether a decision's effects are foreseeable and material will depend on the nature of the specific decision and the relationship of the official's interest to the effects of the governmental decisions.

IS IT REASONABLY FORESEEABLE?¹⁴

Is it a realistic possibility that the decision will actually affect the official's financial interest or is it too remote or theoretical? Two alternative tests answer this question depending on whether an interest is explicitly involved in a decision.

<p><u>An Interest is Explicitly Involved in a Decision If:</u></p> <ol style="list-style-type: none">1) The interest is a named party in or the subject of a governmental decision, or2) The decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the interest, or3) The decision affects the real property of the official as described in Regulation 18702.2(a)(1)-(6).	<p><u>Then</u></p> <p>It is reasonably foreseeable that the decision will have a material financial effect on the interest.</p>
<p><u>If Not Explicitly Involved in the Decision</u></p> <p>All other decisions, other than those above, are considered not explicitly involved in the decision.</p>	<p><u>Then</u></p> <p>If an interest is not explicitly involved in a decision, the financial effect on the interest is reasonably foreseeable only if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. However, if the financial result cannot be expected absent extraordinary circumstances not subject to the public official's control, it is not reasonably foreseeable.</p>

Quick Tip:

For purposes of being vigilant to avoid conflict of interest decisions, keep the general rule in mind – if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable.

IS IT MATERIAL?

The FPPC has adopted various rules (general and specific) for deciding what kinds of financial effects are important enough to trigger a conflict of interest. Generally, for each of the five interests set forth above, a separate materiality standard exists. The following charts reflect the materiality standards that apply to each type of interest.

Interests in Business Entities¹⁵

(Including investments in, employment or positions with, or income from business entities)

If Business Explicitly Involved = Financial Effect Assumed to be Material

A material financial effect is assumed if the business:

- 1) Initiates the proceeding by filing an application, claim, appeal, or request for other government action;
- 2) Offers to make a sale of a service or a product to the official's agency;
- 3) Bids on or enters into a written contract with the official's agency;
- 4) Is the named manufacturer in a purchase order of any product purchased by the official's agency or the sales provider of any products to the official's agency that aggregates to \$1,000 or more in any 12-month period;
- 5) Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement that the official's agency is authorized to issue;
- 6) Is the subject of any inspection, action, or proceeding subject to the regulatory authority of the official's agency; or
- 7) Is otherwise subject to an action the official's agency takes, the effect of which is directed solely at the business entity in which the official has an interest.

NOTE: In all other circumstances, the business is considered not explicitly involved in the decision and the financial effect is not assumed to be material.

⊖ Not Assumed Material if Business Not Explicitly Involved

In all other cases, a financial effect is material *if* a prudent person with sufficient information would find it is reasonably foreseeable that the decision's financial effect would contribute to a change in the price of the entity's publicly traded stock, or the value of a privately-held business entity.

Interests in Real Property¹⁶

NOTE: There are different materiality standards depending on whether it is an ownership or leasehold interest.

Ownership Interests in Real Property

The decision:

- 1) Involves adopting or amending a general or specific plan, that includes the official's property;
- 2) Determines the property's zoning or rezoning, annexation or de-annexation, or inclusion in or exclusion from any city, county, district, or other local government subdivision, or other boundaries (other than a zoning decision applicable to all properties designated in that category);
- 3) Imposes, repeals, or modifies any taxes, fees, or assessments that apply to the property;
- 4) Authorizes the sale, purchase, or lease of the property;
- 5) Involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use of or improvement to the property or any variance that changes the permitted use of, or restrictions placed on it;

NOTE: For a financial effect resulting from a governmental decision regarding permits or licenses issued to the official's business entity when operating on the official's real property, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.

- 6) Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property in which the official has an interest will receive new or improved services that are distinguishable from improvements and services that are provided to or received by other similarly situated properties in the official's jurisdiction or the official will otherwise receive a disproportionate benefit or detriment by the decision.

A material financial effect is assumed if...

<p>Unless it is nominal, inconsequential or insignificant, a material financial effect is also assumed if...</p>	<p>The decision:</p> <ol style="list-style-type: none">1) Changes the development potential of the real property;2) Changes the income-producing potential of the real property; <p>NOTE: If the real property contains a business entity, including rental property, and the nature of the business entity remains unchanged, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.</p> <ol style="list-style-type: none">3) Changes the highest and best use of the parcel of real property in which the official has a financial interest;4) Changes the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;5) Affects real property value located within 500 feet of the official's property line. However, if the real property is commercial property and contains a business entity, the materiality standards under Regulation 18702.1 applicable to business entities would apply instead.¹⁷6) Causes a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official's property.
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Leasehold Interests in Real Property¹⁸

<p>A material financial effect is assumed if...</p>	<p>The decision:</p> <ol style="list-style-type: none">1) Changes the termination date of the lease;2) Increases or decreases the potential rental value of the property;3) Increases or decreases the rental value of the property, and official has right to sublease it;4) Changes the official's actual or legally allowable use of the real property; or5) Impacts the official's use and enjoyment of the real property.
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Sources of Income

NOTE: There are different standards depending if income is for goods and services or the sale of personal or real property.

Income Received for Goods and Services Provided in the Ordinary Course of Business, including a Salary¹⁹

<p>A material financial effect is assumed if...</p>	<p>The source of income is:</p> <ol style="list-style-type: none">1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) An individual and the individual will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those financial interests in Regulation 18702.1 or 18702.2, respectively;3) A nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a real property interest in Regulation 18702.2; or4) A business entity and the business will be financially affected under the standards applied to a business interest in Regulation 18702.1.
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Income from the Sale of Personal or Real Property of the Official or the Official's Spouse if Community Property²⁰

<p>A material financial effect is assumed if...</p>	<p>The official knows or has reason to know that the source of income:</p> <ol style="list-style-type: none">1) Is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) Has an interest in a business entity that will be financially affected under the standards applied to a financial interest in Regulation 18702.1; or3) Has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2.
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Sources of Gifts²¹

(Including Gifts from Individuals, Nonprofits, and Business Entities)

A material financial effect can be assumed if...	<p>The source is:</p> <ol style="list-style-type: none">1) A claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding;2) An individual who will be financially affected under the standards applied to an official in Regulation 18702.5, or the official knows or has reason to know that the individual has an interest in a business entity or real property that will be financially affected under the standards applied to those interests in Regulation 18702.1 or 18702.2, respectively;3) An nonprofit that will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.5; or4) A business entity will be financially affected under the standards in Regulation 18702.1.
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Interests in Personal Finances²²

(Including the Personal Finances of Immediate Family Members)

The financial effect is material if...	The official or the official's immediate family member will receive a measurable financial benefit or loss from the decision unless it is nominal, inconsequential, or insignificant.
--	---

Quick Tip:

There are many rules and many exceptions (so numerous we can't discuss them all here). At a big picture level, remember:

- In most cases, if the financial interest is directly or explicitly involved in the decision, the materiality standard is met. This is because an interest that is directly or explicitly involved in a governmental decision presents a more obvious conflict.
- On the other hand, if the financial interest is not directly or explicitly involved, the materiality standard is generally based on a reasonable person standard.

4. Consider whether an exception applies.

Once an official has determined that he or she has a conflict of interest in a particular decision, the official can examine if an exception permits the official's participation despite the conflict. Not all conflicts of interest prevent the official from lawfully taking part in the government decision.

- *The Public Generally Exception*.²³ Even if an official otherwise has a conflict of interest, the official is not disqualified from the participating in the decision if the "public generally" exception applies. This public generally exception applies when the financial effect on a public official or the official's interests is indistinguishable from its effect on the public generally.

NOTE: The "public generally" exception must be considered with care. An official may not just assume that it applies. There are rules for identifying the specific segments of the general population with which the official must compare the official's financial interest, and specific rules for deciding whether the financial impact will uniquely affect the public official as compared to the public generally. Again, officials should contact their agency counsel or the FPPC concerning these specific rules.

- *Legally Required to Participate*.²⁴ Even if an official has a disqualifying conflict of interest, is the participation legally required? In certain rare circumstances, an official may be called upon to take part in a decision despite the fact that the official has a disqualifying conflict of interest. This "legally required participation" rule applies only in certain very specific circumstances in which the government agency would be paralyzed or unable to act. The FPPC or the agency's counsel must generally make this determination and will instruct the official on how to proceed.

A conflict of interest exists, what now?

Once an official determines that they have a conflict of interest and that an exception does not apply, the official must disqualify from all of the following.²⁵

- *Making the governmental decision*. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Conflicts of Interest

- *Participating in making the governmental decision.* A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.
- *Influencing the governmental decision.* A public official uses his or her official position to influence a governmental decision if he or she: contacts or appears before (1) any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision; or (2) any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact.

Certain officials (including city council members, planning commissioners, and members of the boards of supervisors) have a mandated manner in which they must disqualify from a decision.²⁶ They must publicly identify in detail the interest that creates the conflict, step down from the dais, and must then leave the room. The official must identify the interest following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

If the decision is to take place during a closed session, the identification of the financial interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The financial interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any nonpublic information regarding the decision.

There are limited exceptions that allow a public official to participate even when a conflict is present, such as participating as a member of the general public, speaking to the press, or discussing one's own governmental employment. The exceptions are limited and fact-specific, and may require advice from the agency's counsel or the FPPC.

Final thoughts

Generally speaking, here are the keys for public officials to meet their obligations under the Act's conflict of interest laws:

- Know the purpose of the law, which is to prevent biases, actual and apparent, that result from the financial interests of the decision-makers.
- Learn to spot potential trouble early. Understand which financial interests could give rise to a conflict of interest.

Conflicts of Interest

- Understand the “big picture” of the rules. For example, know why the rules distinguish between explicitly involved interests, and why the public generally exception exists.
- Realize the importance of the facts. Deciding whether an official has a disqualifying conflict of interest depends just as much - if not more - on the facts of the particular situation as it does on the law.
- Don't try to memorize all of the specific conflict of interest rules. The rules are detailed, and the penalties for violating them are significant. Rather, look the rules up or ask about the particular rules applicable to a given case.
- Ask for advice. It is available from the agency's legal counsel and from the FPPC.

Where to go for help?

Email Advice (informal)	advice@fppc.ca.gov
Written Advice (formal and informal)	Fair Political Practices Commission 428 J Street, Suite 620 Sacramento, CA 95814

¹ The Political Reform Act is contained in Government Code §§ 81000 - 91014, and all statutory references are to this code. The FPPC regulations are contained in §§ 18110 - 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Enacted through Proposition 9 at the June 4, 1974 Primary Election.

³ § 81001.

⁴ § 87100.

⁵ *Witt v. Morrow* (1977) 70 Cal. App. 3d 817 at 822–823: “Morrow asserts it is unconstitutional to automatically disqualify a public official from participating in decisions which may affect the investments of an entity which pays him However, the whole purpose of the Political Reform Act of 1974 is to preclude a government official from participating in decisions where it appears he may not be totally objective because the outcome will likely benefit a corporation or individual by whom he is also employed.”

⁶ § 82048.

⁷ § 83115.

⁸ § 81002(c).

⁹ § 87103.

¹⁰ Under § 87103, an official has an “indirect interest” in real property owned by a business entity or trust in which the official, the official’s immediate family, or their agents own directly, indirectly, or beneficially a 10-percent interest or greater.

¹¹ § 82033.

¹² § 82030.

¹³ The Commission adjusts the gift threshold on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index.

¹⁴ Regulation 18701.

¹⁵ Regulation 18702.1

¹⁶ Regulation 18702.2(a).

¹⁷ Particular facts can rebut this presumption depending on advice given by the FPPC.

¹⁸ Regulation 18702.2(b).

¹⁹ Regulation 18702.3(a).

²⁰ Regulation 18702.3(b).

²¹ Regulation 18702.4.

²² Regulation 18702.5.

²³ Regulation 18703.

²⁴ § 87101 and Regulation 18705.

²⁵ Regulation 18704.

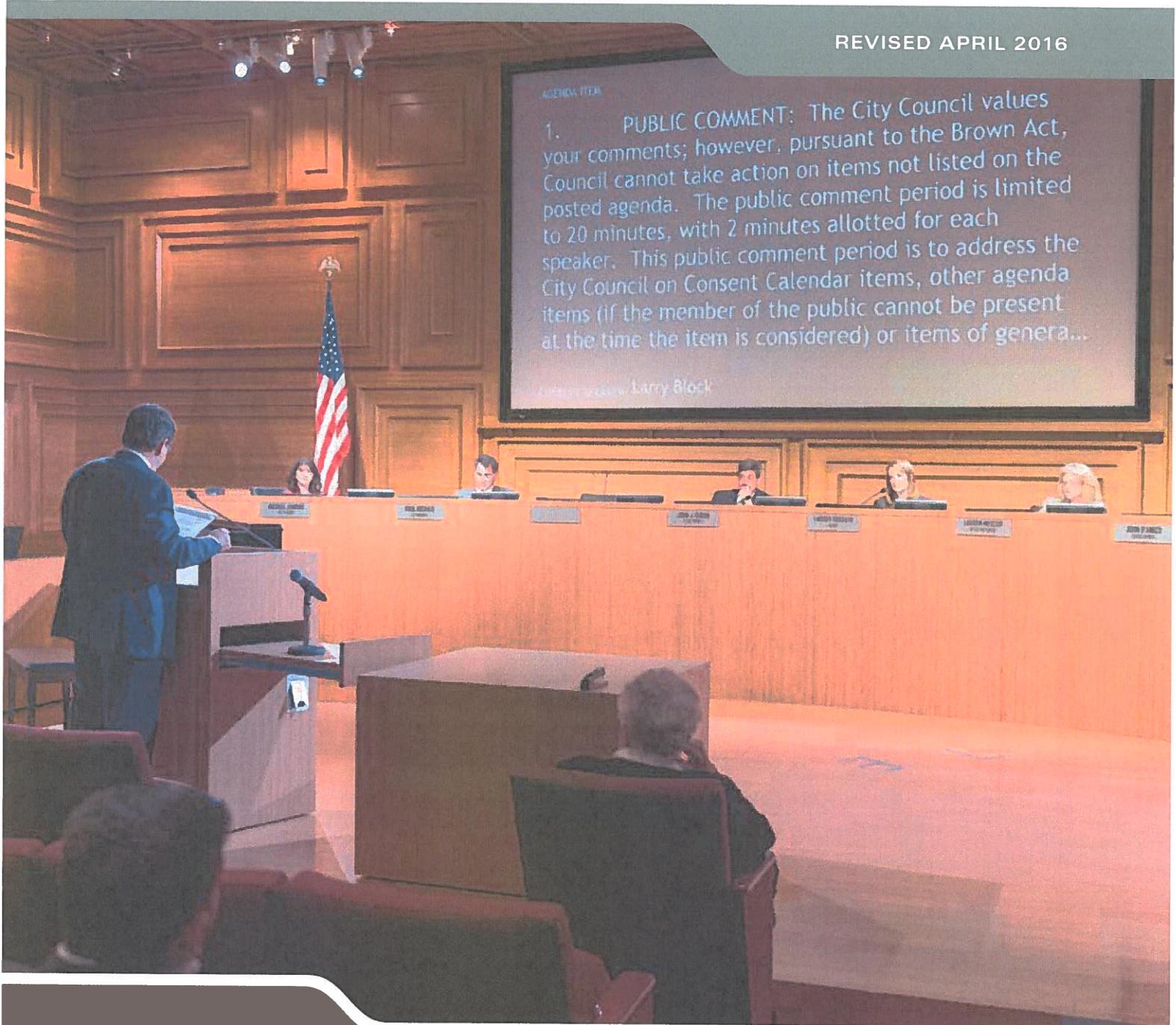
²⁶ § 87105 and Regulation 18707 applicable to persons holding positions specified in § 87200.

Guide to the Ralph M. Brown Act

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016



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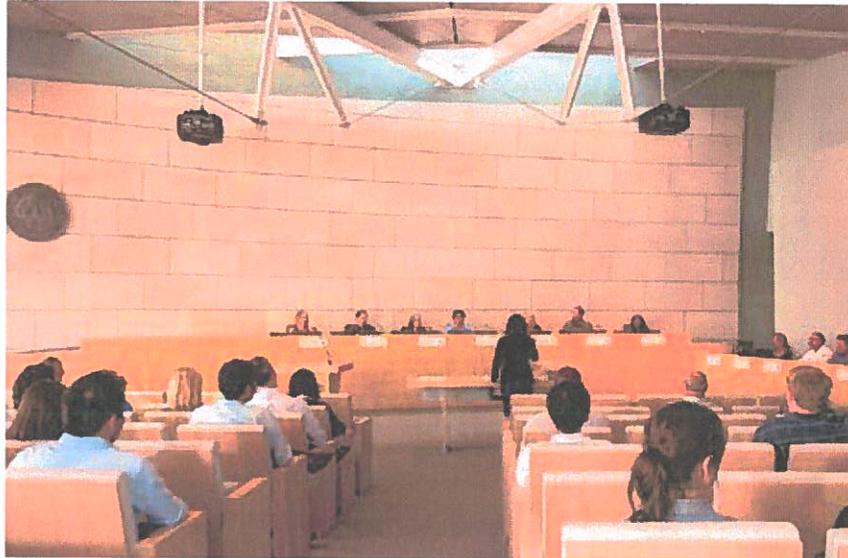
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Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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IT IS THE PEOPLE’S BUSINESS

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Chapter 1

IT IS THE PEOPLE'S BUSINESS



The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the 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

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

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.

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.

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.

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.

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.

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.

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



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.

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.

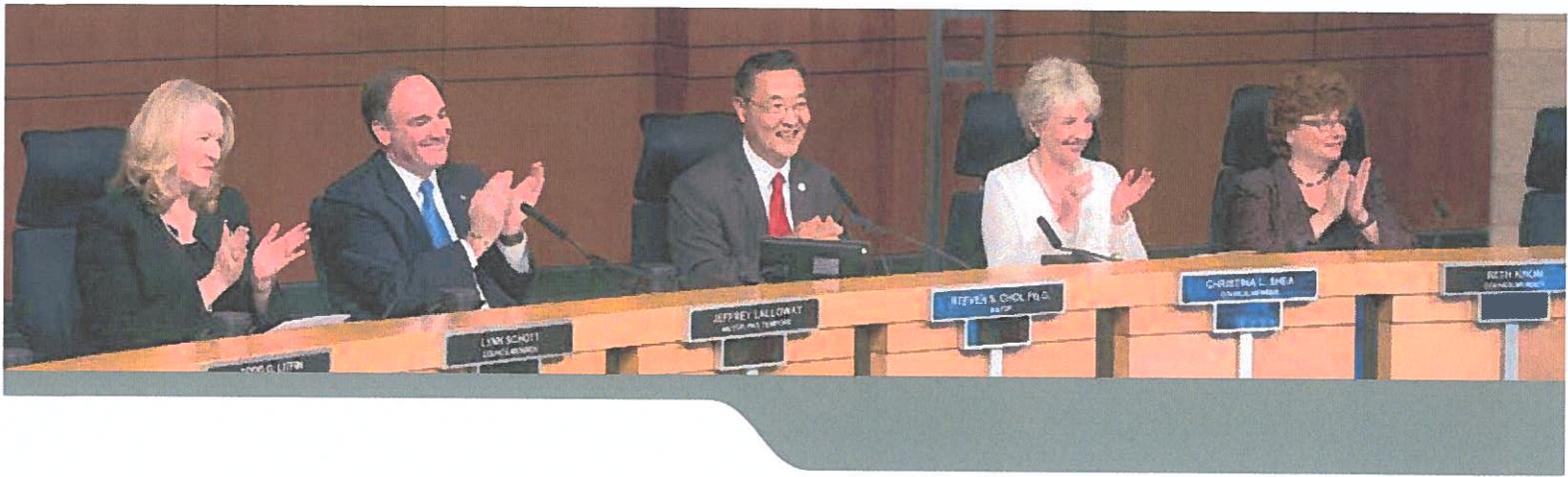
Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Assembly in 1942 and served 19 years, including the last three years as Speaker. He then became an appellate court justice.

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.

ENDNOTES:

- 1 California Government Code section 54950
- 2 California Constitution, Art. 1, section 3(b)(1)
- 3 California Government Code section 54953(a)
- 4 This principle of broad construction when it furthers public access and narrow construction if a provision limits public access is also stated in the amendment to the State's Constitution adopted by Proposition 59 in 2004. California Constitution, Art. 1, section 3(b)(2).
- 5 California Government Code section 54952.2(b)(2) and (c)(1); *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533
- 6 California Government Code section 54953.7

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



Chapter 2

LEGISLATIVE BODIES

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Chapter 2

LEGISLATIVE BODIES

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



What is a “legislative body” of a local agency?

A “legislative body” includes:

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

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

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

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.

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

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.”

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

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

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

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

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

first leased under Health and Safety Code subsection 32121(p) after 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



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 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.

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.

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

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

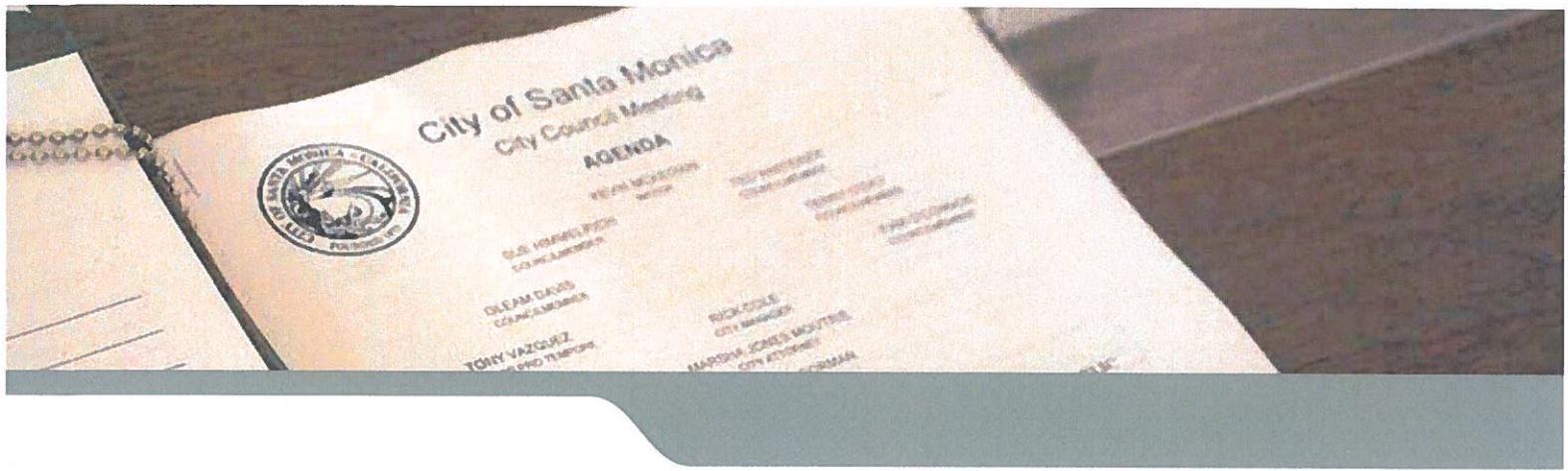
Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of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



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?

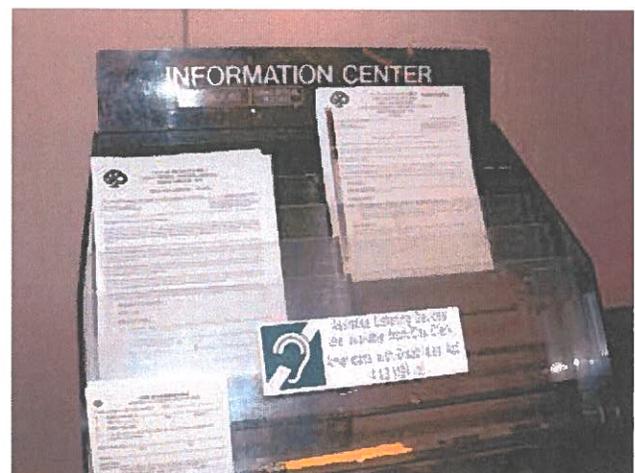
A. Yes, so long as it does not result in extended discussion or action by the body.

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

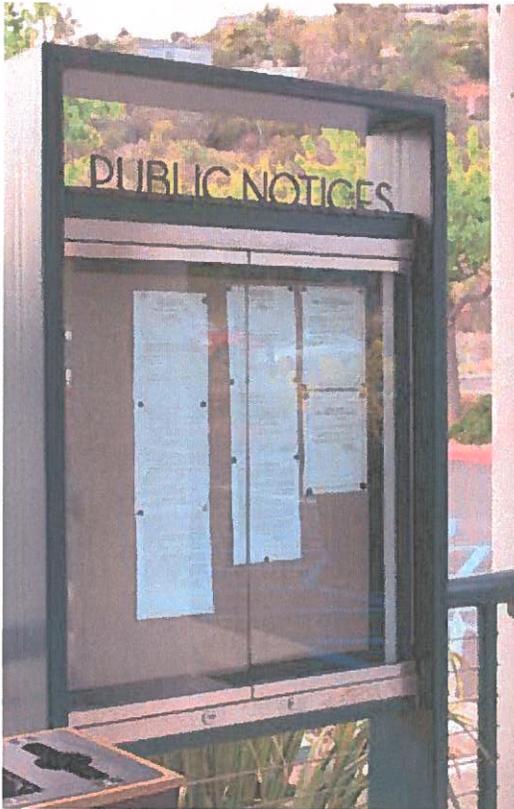
Notices and agendas for adjourned and continued meetings and hearings

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 XIII C or XIII D, 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.

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?

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

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



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

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

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

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

The right to attend and observe meetings

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

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

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

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

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

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

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

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

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

Records and recordings

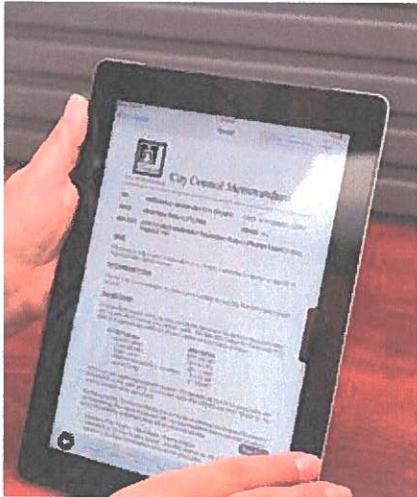
The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available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

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

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

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

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



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

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

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



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

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

The public's place on the agenda

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

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

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

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

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

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

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

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

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



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

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

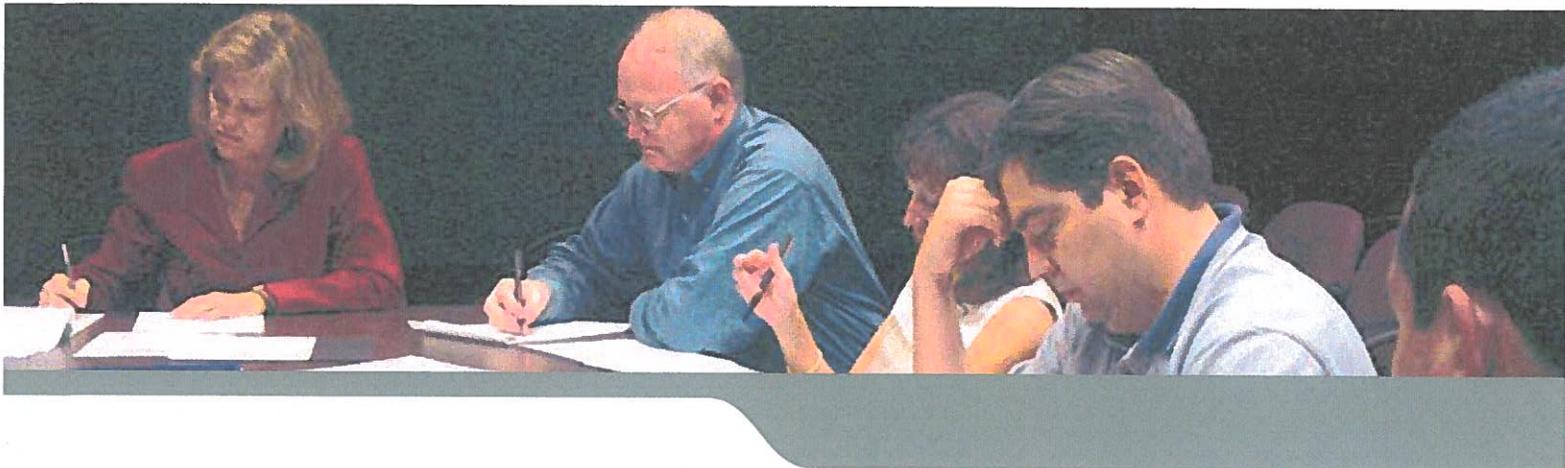
Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.⁴⁶

Endnotes:

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code sections 54954.2(a)(1) and 54954.2(d)
- 5 California Government Code section 54960.1(d)(1)
- 6 ___ Ops.Cal.Atty.Gen. ___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262
- 7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432
- 8 ___ Ops.Cal.Atty.Gen. ___, No. 14-1204 (January 19, 2016) 16 Cal. Daily Op. Serv. 937 (Cal.A.G.), 2016 WL 375262, Slip Op. at p. 8
- 9 California Government Code section 54954.2(a)(1)
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of CEQA action (mitigated negative declaration) without specifically listing it on the agenda violates Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis.)

- 11 California Government Code section 54954.1
- 12 California Government Code sections 54956(a) and (c)
- 13 California Government Code section 54955
- 14 California Government Code section 54954.2(b)(3)
- 15 California Government Code section 54955.1
- 16 California Government Code section 54956.5
- 17 California Government Code section 54952.3
- 18 Education Code sections 35144, 35145 and 72129
- 19 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 20 California Education Code section 35145.5
- 21 California Government Code section 54954.6
- 22 See Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 23 California Government Code section 54954.2(b)
- 24 California Government Code section 54954.2(a)(2)
- 25 California Government Code section 54953.3
- 26 California Government Code section 54961(a); California Government Code section 11135(a)
- 27 California Government Code section 54952.2(c)(2)
- 28 California Government Code section 54953(b)
- 29 California Government Code section 54953(c)
- 30 California Government Code section 54953(c)(2)
- 31 California Government Code section 54957.9.
- 32 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed towards mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption).
- 33 California Government Code section 54957.9
- 34 California Government Code section 54957.5
- 35 California Government Code section 54957.5(d)
- 36 California Government Code section 54957.5(b)
- 37 California Government Code section 54957.5(c)
- 38 California Government Code section 54953.5(b)
- 39 California Government Code section 54957.5(d)
- 40 California Government Code section 54953.5(a)
- 41 California Government Code section 54953.6
- 42 California Government Code section 54954.3(a)
- 43 California Government Code section 54954.3(c)
- 44 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 45 California Government Code section 54954.3(a)
- 46 California Government Code section 54954.3(a)

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



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Chapter 5

CLOSED SESSIONS

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



As summarized in Chapter 1 of this Guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.² The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. 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

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

In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions 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.

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.

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

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.

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

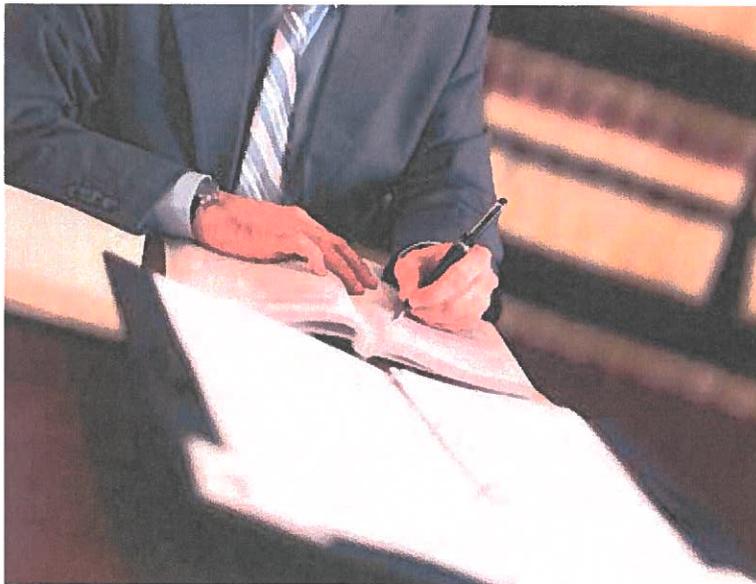
Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.²⁰ The legislative body may also meet under this exception to determine 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 concern²⁴ 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

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.

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.

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.

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

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

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

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

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

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.

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

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

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Chapter 6

REMEDIES



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

Invalidation

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

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

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

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

Applicability to Past Actions

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

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

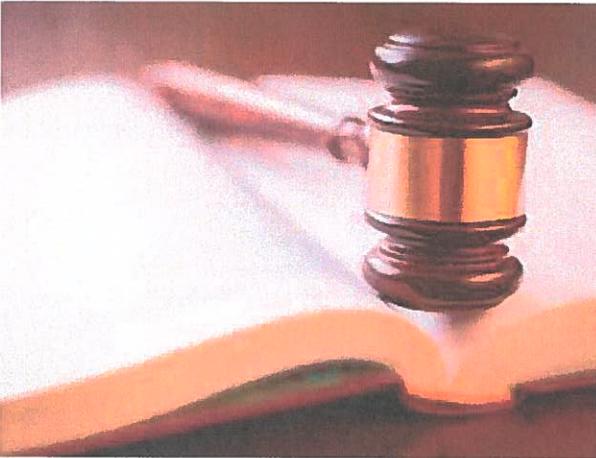
The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment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

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.

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



It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future 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

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

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

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.

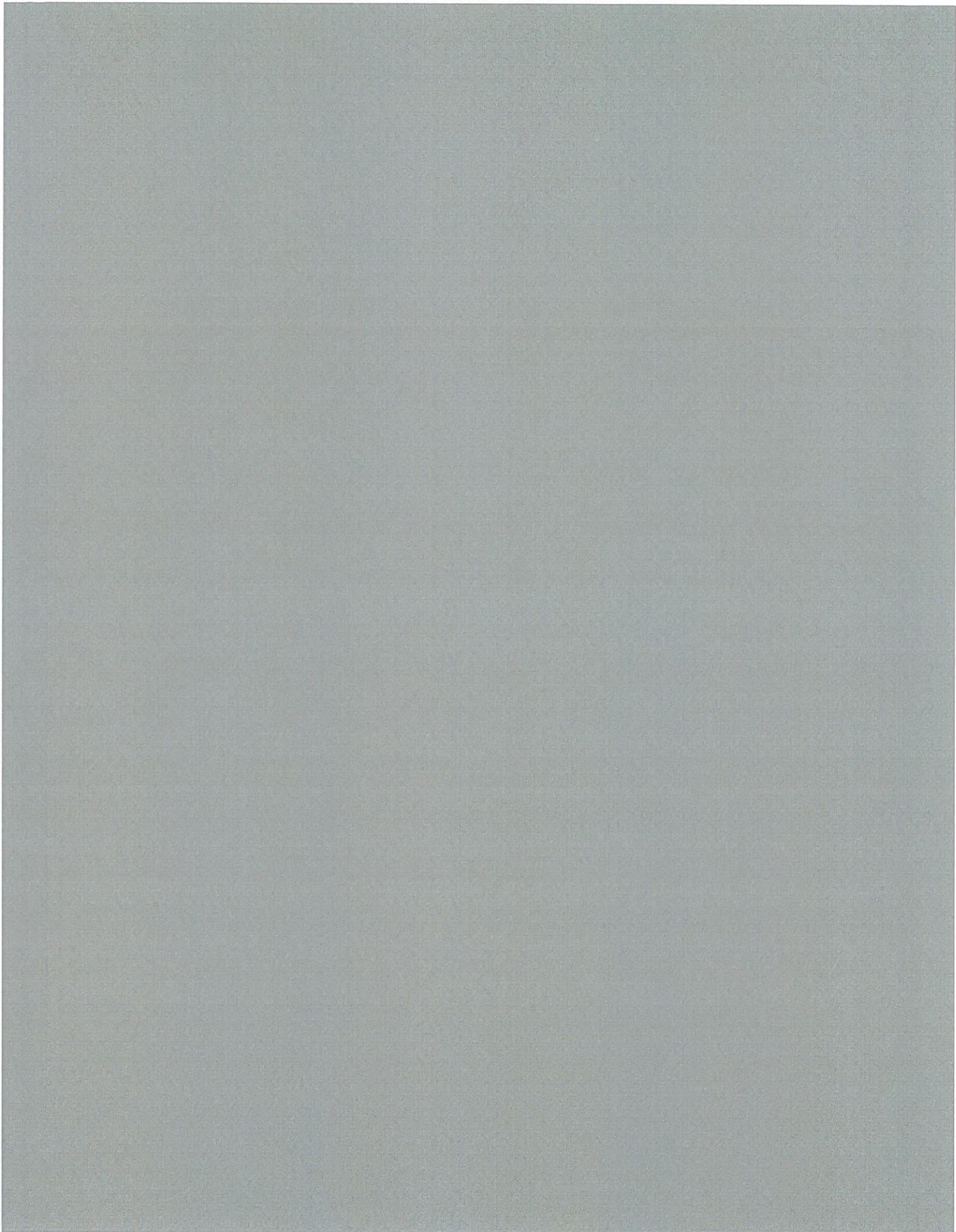
ENDNOTES:

- 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 54956.5 (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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Appendix D

Sample Oath of Office

Oath of Office

FOR PUBLIC OFFICERS AND EMPLOYEES
(State Constitution, Art. XX, Sec. 3 as amended)

State of California }
 }
Town of Mammoth Lakes } ss.

I, state your name, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

POLICE OFFICER

John Smith, Police Officer

Subscribed and sworn to before me this 6th day of June, 2018.

Jamie Gray, Town Clerk

Municipal Code Excerpts

Chapter 2.28 Boards and Commission Generally
**Chapter 2.32 Planning and Economic
Development Commission**
Chapter 2.40 Recreation Commission

Chapter 2.28 - BOARDS AND COMMISSIONS GENERALLY

Sections:

2.28.010 - Appointments, terms, vacancies, and meetings.

- A. Unless otherwise provided by law, or by ordinance or resolution, or unless by the very nature of a situation the provisions of this chapter may not be made applicable, all members of boards and commissions of the town shall be appointed by the town council. Newly established boards or commissions initial or revised appointments will be made on a staggered-term basis. The term of office shall be four years, with an expiration date of July 31 of even-numbered years. Interim vacancies shall be filled by appointment for the unexpired term of the member replaced.
- B. Any member of a board or commission of this town may be removed from office at any time, with or without cause, by a majority vote of the town council, except in cases where the mayor or town council are not the appointing authority (in which cases such regular appointing authority may exercise this power of removal). If a member absents himself/herself, without advance permission of the board or commission or of his/her appointing authority, from three consecutive regular meetings or from twenty-five percent of the duly scheduled meetings of the board or commission within any fiscal year, his/her office shall thereupon become vacant and shall be filled as any other vacancy.
- C. Unless otherwise provided by law, or by ordinance or resolution of the town council, at least four members of any five-member board or commission; at least five members of any seven-member board or commission; or at least six members of any nine-member board or commission of the town appointed by the town council shall be initially, and during their incumbencies, bona fide residents and registered voters of the town. No such member shall at appointment or during his/her incumbency be an employee of the town.
- D. All boards and commissions shall hold one regular meeting per month, at a time, date, and place designated by the board or commission unless a meeting(s) is cancelled by the chair or the majority of the board or commission for a lack of agenda items. Special meetings may be called by the chair or a majority of the board or commission members, provided notice has been given to all members at least forty-eight hours prior to the meeting.

(Ord. 00-07 § 1, 2000; Ord. 99-08 § 1, 1999; Ord. 96-09 § 1, 1996; Ord. 93-01, 1993; Ord. 89-04 § 1 (part), 1989; prior code § 2.06.010)

(Ord. No. 2009-07, § 1(Exh. A), 11-4-09; Ord. No. 12-02, § 2(Exh. A), 6-6-2012)

2.28.020 - Chairpersons and vice chairpersons—Selection—Terms.

Unless otherwise provided by law, or by ordinances or resolution, each board and commission of the town shall annually at its first meeting held after June 30th, choose one of its number as chairperson and one as vice-chairperson. Each chairperson and vice-chairperson shall have authority and perform such duties as are commonly associated with their respective titles, or any may be specially prescribed by law or by the laws or other rules of the board or commission. Vacancies in either such position occurring prior to July 1st may be filled as in the first instance, and a new chairperson or vice-chairperson may be chosen at any time any majority vote of all members of the board or commission.

(Prior code § 2.06.020)

Chapter 2.32 - PLANNING AND ECONOMIC DEVELOPMENT COMMISSION⁽¹⁾

Sections:

2.32.010 - Created.

There is created a planning commission for the town. It shall consist of five members appointed in the manner and for the terms prescribed in Sections 2.04.060 and 2.28.010. (Ord. 89-10 § 1(part), 1989; Ord. 4 § 1(part), 1984; prior code § 2.18.010)

(Ord. No. 2009-07, § 1(Exh. A), 11-4-09)

2.32.020 - Chair—Committees—Staff.

Designation of chairpersons for the commission shall be governed by Section 2.28.020. The commission shall be authorized to appoint and fix the membership of such number of standing and temporary committees as it may find expedient for the performance of its duties. The town manager may appoint an executive secretary and other staff and provide such compensation for their services as may be authorized by the town council and by the annual town budget of expenditures.

(Ord. 4 § 1(part), 1984: prior code § 2.18.020)

2.32.030 - Meetings—Rules of procedure.

The planning commission shall hold one regular meeting each month at a time, date, and place designated by the commission unless a meeting(s) is cancelled by the chair or the majority of the commission for a lack of agenda items. Special meetings may be called by the chair or a majority of the commission, provided notice has been given to all members at least forty-eight hours prior to the meeting. A majority of commissioners shall constitute a quorum.

(Ord. 92-10 § 1, 1992; Ord. 4 § 1(part), 1984: prior code § 2.18.030)

(Ord. No. 12-02, § 2(Exh. A), 6-6-2012)

2.32.040 - Functions, powers and duties.

The functions, powers, and duties of the planning and economic development commission shall be all those functions, powers, and duties of a planning commission and board of zoning adjustment as provided in Chapters 3 and 4 of Title 7 commencing with Section 65100 of the Government Code of the state (the planning and zoning law), as the same may be hereafter amended. The planning and economic development commission shall perform such other duties and functions as may be designated by the town council. All references in this Municipal Code to the public arts commission shall be deemed to mean the planning and economic development commission.

(Ord. 4 § 1(part), 1984: prior code § 2.18.040)

(Ord. No. 12-05, § 2, 12-19-2012)

2.32.050 - Rules—Records and meetings.

The planning commission shall adopt rules for the transaction of business, shall keep a public record of its resolutions, transactions, findings and determinations, and shall hold at least one regular meeting each month. Minutes of the planning commission meetings shall be filed with the town clerk.

(Ord. 4 § 1(part), 1984: prior code § 2.18.050)

2.32.060 - Compensation.

The members of the planning commission shall receive such reasonable compensation as is established from time to time by resolution of the town council and reimbursement for such traveling expenses and mileage as is set forth in the town's policies and procedures regarding traveling expenses and mileage, as the same are amended from time to time.

(Ord. 4 § 1(part), 1984: prior code § 2.18.060)

Chapter 2.40 - TOWN OF MAMMOTH LAKES RECREATION COMMISSION^[3]

Sections:

2.40.010 - Definitions.

For the purpose of this chapter, "commission" means the Town of Mammoth Lakes Recreation Commission.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2010-11, § 1(Att. A), 9-22-2010)

2.40.020 - Created.

There is created within the town a recreation commission which shall consist of five regular voting members. Such members shall be appointed by the town council in the manner and for the terms prescribed in Sections 2.04.060 and 2.28.010.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2009-07, § 1(Exh. A), 11-4-09; Ord. No. 2010-11, § 1(Att. A), 9-22-2010; Ord. No. 12-02, § 2 (Exh. A), 6-6-2012)

2.40.025 - Composition.

The commission shall be comprised of members who represent a broad spectrum of business and recreation interests.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2010-11, § 1(Att. A), 9-22-2010; Ord. No. 12-02, § 2(Exh. A), 6-6-2012)

2.40.030 - Vacancies—Vote.

A vacancy or vacancies on the commission shall not impair the right of the remaining members to exercise the powers of the commission. Three members shall constitute a quorum. The commission shall act only upon a majority vote of the members present, but in no case shall action be taken unless a quorum is present.

(Ord. No. 2009-07, § 1(Exh. A), 11-4-09; Ord. No. 2010-11, § 1(Att. A), 9-22-2010; Ord. No. 12-02, § 2 (Exh. A), 6-6-2012)

2.40.040 - Powers and duties.

Within the limitations provided by law, the Town of Mammoth Lakes Recreation Commission shall have the following powers and duties to:

- A. Establish a schedule of regular meeting times and places;
- B. Make recommendations to the department director (or designee) on funding priorities related to the departmental budget;
- C. Serve as a liaison between the Town of Mammoth Lakes Recreation Commission and the recreation service providers and users, and the town;
- D. Advise the town council and the town manager in all matters pertaining to parks, recreation, facilities, trails, special events and all other associated activities as prescribed by ordinances or by town council action;
- E. Aid and participate in advancement and coordination of recreation services and events with other governmental agencies, non-governmental organizations, civic groups, volunteer organizations, and the private sector;
- F. Formulate rules and regulations with respect to use and conduct in parks and other recreation areas;
- G. Regularly review surveys provided by the department director (or designee) of the population of Mammoth Lakes, to insure that parks, recreation, facilities, trails, and special event needs are being met;
- H. Determine the recreational capital needs of the community, after review of recommendations by the department director (or designee), for consideration in the town's master facility and capital improvement program process;
- I. Conduct public hearings relating to land acquisition for recreation purposes,

subject to town council approval;

- J. Conduct public hearings and make decisions, subject to appeal to council, relating to park and facility design and development;
- K. Provide input to contract professionals, in conjunction with the department director (or designee), to assist in the design of facilities approved for construction through the budget process, subject to appeal to council.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 17-01, § 1(Exh. A), 1-4-2017; Ord. No. 2010-11, § 1(Att. A), 9-22-2010)

2.40.050 - Receipt of donations.

The commission shall be empowered to receive donations, contributions and other gifts to be used for recreation purposes, but all money so received by it shall be deposited in a special park and recreation account. After appropriation by the town council, money deposited in such an account shall be expended for park and recreation purposes, including but not limited to capital and operating expenditures.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2010-11, § 1(Att. A), 9-22-2010)

2.40.060 - Compensation.

The members of the commission may receive such reasonable compensation as is established from time to time by resolution of the town council.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2010-11, § 1(Att. A), 9-22-2010)

2.40.070 - Special requirements.

Unless otherwise provided by law, or by ordinance or resolution of the town council, at least four members of the recreation commission shall initially, and during their incumbencies, be bona fide residents and registered voters of the town. To capture a "Sphere of Influence," one

member of the commission may reside outside of the town boundaries but between June Lake and Tom's Place, inclusive. No such member shall at appointment or during his or her incumbency be an employee of the town.

(Ord. 04-06 § 1 (Exh. A (part)), 2004)

(Ord. No. 2010-11, § 1(Att. A), 9-22-2010; Ord. No. 12-02, § 2(Exh. A), 6-6-2012)