REGULAR CITY COUNCIL MEETING AGENDA

City Hall - Council Chambers
4381 Broadway St., Suite 201, American Canyon
October 1, 2024
6:30 PM

Mayor: Leon Garcia
Vice Mayor: David Oro
Councilmembers: Mariam Aboudamous, Mark Joseph, Pierre Washington

Tonight's meeting is a limited public forum. American Canyon promotes respectful and responsible behavior among its meeting participants, whether they are present in person or remotely. Using offensive language or remarks that promote, foster, or perpetuate discrimination based on race, creed, color, age, religion, gender marital status, status regarding public assistance, national origin, physical or mental disability or sexual orientation/gender identification, as well as any other category protected by federal, state or local laws will not be tolerated. In the case of an occurrence, the speaker will be immediately disconnected from the microphone.

PUBLIC PARTICIPATION
City Council and other public meetings will be conducted in person. This meeting is also available via Zoom, is broadcast live to residents on Napa Valley TV, on our website and on YouTube.

Zoom Link: Click here. **Webinar ID:** 862 3299 1024; Passcode: 12345. **Phone in to Zoom:** 408-638-0968

Oral comments, during the meeting: Oral comments can be made in person during Open and Closed Session or through Zoom in Open Session only. On Zoom use the "raise your hand" tool during any public comment period. To avoid confusion, hands raised outside of Public Comment periods will be lowered.

Written comments: Submit written comments by the eComments link, located on the Meetings & Agendas page of our website. eComments are available to council members in real time. To allow for Council review of comments, eComments will close at 3:00 pm on the day of the meeting.

The above identified measures exceed all legal requirements for participation in public comment, including those imposed by the Ralph M. Brown Act. For more information, please call the Office of the City Clerk at (707) 647-4369 or email cityclerk@cityofamericancanyon.org.

AGENDA MATERIALS: City Council agenda materials are published 72 hours prior to the mee-ng and are available to the public via the City's website at www.cityofamericancanyon.org.

AMERICANS WITH DISABILITIES ACT: The City Council will provide materials in appropriate alternative formats to comply with the Americans with Disabilities Act. Please send a written request to City Clerk at 4381 Broadway, Suite 201, American Canyon, CA 94503 or by email to cityclerk@cityofamericancanyon.org. Include your name, address, phone number and brief description of the requested materials, as well as your preferred alternative format or auxiliary aid, at least three calendar days before the meeting.

5:30 P.M. – CLOSED SESSION

The mayor will call the meeting to order and conduct roll call. Council will immediately convene into Closed Session after hearing any public comment on Closed Session items. At 6:30 p.m. the Council will reconvene into Open Session and then resume Closed Session at the end of the meeting to address outstanding items, if necessary.

CALL TO ORDER - CLOSED SESSION

ROLL CALL - CLOSED SESSION

PUBLIC COMMENTS - CLOSED SESSION ITEMS

This time is reserved for members of the public to address the City Council on Closed Session Items only. Comments must be made in person and are limited to 3 minutes. Comments for items on the Open Session agenda will be taken when the item is called in Open Session. Comments for Items not on the Closed Session or Open Session agenda will be heard during the Open Session Public Comment period.

MEETING RECESS - COUNCIL TO CONVENE IN CLOSED SESSION

5:30 P.M. CLOSED SESSION ITEMS

1. **Conference with Legal Counsel – Anticipated Litigation. Authorized pursuant to Government Code Section 54956.9 (d)(2). Three (3) Matters.**
   Recommendation:

2. **Conference with Legal Counsel - Existing Litigation. Authorized pursuant to Government Code Section 54956.9(d)(1):**
   a. ***City of American Canyon v. City of Vallejo, et al*. (Sacramento Superior Court Case No. 34-2022-00327471).**
   b. ***City of Vallejo v. City of American Canyon et al*. (Sacramento County Superior Court Case No. 23WM000055).**
   c. ***City of Vallejo v. City of American Canyon et al*. (Sacramento County Superior Court Case No. 24WM000078).**
   d. ***City of Vallejo v. City of American Canyon et al.* (Marin County Superior Court Case No. CV0003752).**

6:30 P.M. OPEN SESSION - REGULAR MEETING

CALL TO ORDER - COUNCIL TO RECONVENE IN OPEN SESSION

PLEDGE OF ALLEGIANCE

ROLL CALL - OPEN SESSION

REPORT ON CLOSED SESSION/CONFIRMATION OF REPORTABLE ACTION

PROCLAMATIONS AND PRESENTATIONS

3. **Proclamation - Filipino Heritage Month**

4. **Proclamation - October 2024 National Code Compliance Appreciation Month**

5. **Proclamation - National Community Planning Month 2024**

PUBLIC COMMENTS - ITEMS NOT ON CLOSED SESSION OR OPEN SESSION AGENDA

This time is reserved for members of the public to address the City Council on items that are not on the Closed Session or Open Session agenda and are within the subject matter jurisdiction of the City Council. Comments are limited to 3 minutes. Comments for items on the Open Session agenda will be taken when the item is called in Open Session.The City Council is prohibited by law from taking any action on matters discussed that are not on the agenda, and no adverse conclusions should be drawn if the City Council does not respond to public comment at this time.

AGENDA CHANGES

The Mayor and Council may change the order of the Agenda or request discussion of a Consent Item. A member of the Public may request discussion of a Consent Item by making that request during Public Comment.

CONSENT CALENDAR

6. **Minutes of September 17, 2024**
Recommendation: Approve the minutes of the Regular City Council meeting of September 17, 2024.

7. **Report Upon Return from Closed Session**
Recommendation: Approve the Report Upon Return from Closed Session for the City Council meeting of September 17, 2024.

8. **Contract Amendment #3 with Robert Half International Inc. for Temporary Staffing Services**
Recommendation: Adopt a Resolution authorizing the City Manager to execute Amendment #3 to Agreement No. 2022-A148 with Robert Half International Inc.

PUBLIC HEARINGS

9. **Oat Hill Multifamily Residential Major Modification**
Recommendation: Consider a Resolution approving a Major Modification to the Oat Hill Multifamily Residential Project Parcel A and B Design Permits located on the east side of Oat Hill south of Napa Junction Road (PL24-0009)

BUSINESS

10. **City Council Code of Conduct and Governance Protocols**
Recommendation: Provide feedback on a draft City Council Code of Conduct and Governance Protocols

MANAGEMENT AND STAFF ORAL REPORTS

11. **Wastewater Enterprise Update**

MAYOR/COUNCIL COMMENTS AND COMMITTEE REPORTS

The Mayor and Council may comment on matters of public concern and announce matters of public interest; no collective council action will be taken.

FUTURE AGENDA ITEMS

12. Future Agenda Items of Note

ADJOURNMENT

CERTIFICATION

I, Taresa Geilfuss, City Clerk for the City of American Canyon, do hereby declare that the foregoing agenda of the City Council was posted in compliance with the Brown Act prior to the meeting date.

_____

Taresa Geilfuss, CMC, City Clerk

CITY OF AMERICAN CANYON
PROCLAMATION

October 2024 is Filipino American Heritage Month

WHEREAS, in 2009, the United States Congress recognized October as Filipino American Heritage Month in the United States; and

WHEREAS, Filipino Americans are the second-largest Asian American group in the nation and the third-largest ethnic group in California; and

WHEREAS, the celebration of Filipino American History Month in October commemorates the first recorded presence of Filipinos in the continental United States, which occurred on October 18, 1587, when "Luzones Indios" came ashore from the Spanish galleon Nuestra Senora de Esperanza and landed at what is now Morrow Bay, California; and

WHEREAS, through the development of these three institutions – Filipino American Studies (FAS), Filipino American National Historical Society (FANHS), and Filipino American History Month (FAHM) – we recognize how Filipino Americans have initiated collective, grassroots efforts to ensure that their voices are heard, that their experiences are recognized, and their histories are told; and

WHEREAS, we acknowledge these major historical markers in our community, and we encourage Filipino Americans and their allies across the country to collectively celebrate Filipino American Heritage Month with these legacies in mind; and

WHEREAS, we recognize the many ways that Filipino Americans have made significant economic contributions and have other profound positive influences on our community through their strong commitment to family, faith, education, hard work, culture, and service; and

WHEREAS, in acknowledging the many legacies created by Filipino Americans across the United States, and in American Canyon, we encourage our community members to be enriched by the cultural contributions of our Filipino-American friends and neighbors for many decades to come.

NOW, THEREFORE, BE IT RESOLVED that I, Mayor Leon Garcia, on behalf of the entire City Council, do hereby proclaim October 2024 as Filipino American Heritage Month in the City of American Canyon.

Dated: October 1, 2024

_____

Leon Garcia, Mayor

CITY OF AMERICAN CANYON

PROCLAMATION

NATIONAL CODE COMPLIANCE APPRECIATION MONTH
OCTOBER 2024

WHEREAS, Code Enforcement Officers provide health, safety, and welfare to communities throughout the State of California by educating, and when necessary, enforcing local, state, and federal laws; and

WHEREAS, Code Enforcement Officers have challenging and demanding roles and often do not receive recognition for their work to maintain and improve resident quality of life and business economic vitality; and

WHEREAS, Code Enforcement requires extensive knowledge of building, zoning, housing, animal control, environmental, health, and life safety; and

WHEREAS, Code Enforcement Officers possess expertise and training in Code Enforcement certification, California Law Enforcement Telecommunications System certification, mediation, and conflict resolution; and

WHEREAS, Code Enforcement Officers are often facilitate assistance to homebound and vulnerable residents in need; and

WHEREAS, Code Enforcement Officers frequently coordinate their efforts with building officials, law enforcement, fire safety, and legal personnel; and

WHEREAS, Code Enforcement Officers have a highly visible role in the communities they serve and respect individual's lifestyle choices when explaining neighborhood preservation rules and regulations; and

WHEREAS, Code Enforcement Officers often work nights, and weekends; sometimes under dangerous conditions to keep American Canyon residents and businesses safe from hazards; and

WHEREAS, the American Association of Code Enforcement recognizes and honors Code Enforcement Officers and Professionals to bring awareness to the importance of Code Enforcement to the communities of the United States.

NOW, THEREFORE, THEREFORE, BE IT RESOLVED, that the City Council of the City of American Canyon hereby recognizes and expresses its appreciation for the dedication and service of our Code Enforcement Officers.

Dated: October 1, 2024

_____

Leon Garcia, Mayor

CITY OF AMERICAN CANYON

PROCLAMATION

NATIONAL COMMUNITY PLANNING MONTH
OCTOBER 2024

WHEREAS, constant change affects all jurisdictions including the City of American Canyon; and

WHEREAS, community planning provides a framework to enable all residents to work together to bring positive change with better choices for how people work and live; and

WHEREAS, community planning facilitates proactive decision making to anticipate and address future challenges; and

WHEREAS, community planning identifies and balances competing interests within the community, ensuring that diverse viewpoints are considered and integrated into the planning process; and

WHEREAS, community planning supports economic development by guiding long-term needs for infrastructure and public services which creates a stable and predictable environment for investment and growth; and

WHEREAS, community planning promotes sustainable practices and resilience, helping communities to adapt to environmental changes and reduce their ecological footprint; and

WHEREAS, community planning provides a basis for informed decision-making by local governments, ensuring that policies and actions are aligned with the community's long-term goals; and

WHEREAS, October is designated throughout the United States of America as **National Community Planning Month** by the American Planning Association to remind and celebrate the contributions of sound planning.

NOW, THEREFORE, **BE IT RESOLVED,** that I, Mayor Leon Garcia, and the City Council of American Canyon, do hereby proclaim October 2024, as "Community Planning Month" in the City of American Canyon.

Dated: October 1, 2024

_____

Leon Garcia, Mayor

CITY OF AMERICAN CANYON
REGULAR CITY COUNCIL MEETING

ACTION MINUTES

September 17, 2024

4:00 P.M. – CLOSED SESSION

CALL TO ORDER - CLOSED SESSION

The City Council meeting was called to order at 4:07 p.m.

ROLL CALL - CLOSED SESSION

Present: Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
Absent: None
Excused: Councilmember Mariam Aboudamous

PUBLIC COMMENTS - CLOSED SESSION ITEMS

Mayor Garcia called for public comments. Written comments: none. Oral comments: none. The public comment period was closed.

MEETING RECESS - COUNCIL TO CONVENE IN CLOSED SESSION

CLOSED SESSION ITEMS

1. Conference with Legal Counsel – Anticipated Litigation. Authorized pursuant to Government Code Section 54956.9 (d)(2). Two (2) Matters.
Action:

2. Conference with Legal Counsel - Existing Litigation. Authorized pursuant to Government Code Section 54956.9(d)(1):

a) City of American Canyon v. City of Vallejo, et al. (Sacramento Superior Court Case No. 34-2022-00327471).
b) City of Vallejo v. City of American Canyon et al. (Sacramento County Superior Court Case No. 23WM000055).
c) City of Vallejo v. City of American Canyon et al. (Sacramento County Superior Court Case No. 24WM000078).
d) City of Vallejo v. City of American Canyon et al. (Marin County Superior Court Case No. CV0003752).

3. Conference with Real Property Negotiators - Authorized Pursuant to Government Code Section 54956.8

a) Property: Northeast corner of Eucalyptus Drive and Greenwing. APNs: 058-030-016-000, 058-030-018-000; Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment
b) Property Address: 25 Medeiros Lane (APN 058-270-001-000); Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment
c) Property Address: 5750 South Kelly Road (APN's 057-090-065, 066 & 068) Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment.

6:30 P.M. OPEN SESSION - REGULAR MEETING

CALL TO ORDER - COUNCIL TO RECONVENE IN OPEN SESSION

The City Council meeting was called to order at 6:34 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

ROLL CALL - OPEN SESSION

Present: Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
Absent: None
Excused: Councilmember Mariam Aboudamous

REPORT ON CLOSED SESSION/CONFIRMATION OF REPORTABLE ACTION

A report on Closed Session and confirmation of reportable action was given by City Attorney William Ross.

PROCLAMATIONS AND PRESENTATIONS

4. Proclamation - Suicide Prevention Month

Mayor Garcia announced the Suicide Prevention Month proclamation. It was received by Prevention Director Jeni Olsen and Bilingual Prevention Specialist Arturo Garcia of MENTIS, Napa's Center for Mental Health Services.

5. Proclamation - National Recovery Month

Mayor Garcia announced the National Recovery Month proclamation. It was received by Assistant Deputy Director of Behavioral Health Nathan Hobbs, Napa County Health and Human Services, Behavioral Health Division.

6. Presentation - Napa County Mosquito Abatement District

Council received a Napa County Mosquito Abatement District presentation from District Manager Wes Maffei.

PUBLIC COMMENTS - ITEMS NOT ON CLOSED SESSION OR OPEN SESSION AGENDA

Mayor Garcia called for public comments. Written comments: none. Oral comments: Steve Reilly was called to speak; Bernice Newell was called to speak; Beth Marcus was called to speak. The public comment period was closed.

AGENDA CHANGES

There were no changes to the agenda.

CONSENT CALENDAR

Action: Motion to adopt the CONSENT CALENDAR made by Councilmember Pierre Washington, seconded by Vice Mayor David Oro, and CARRIED by roll call vote.

Ayes: Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
Nays: None
Abstain: None
Excused: Councilmember Mariam Aboudamous

7. Minutes of September 3, 2024
Action: Approved the minutes of the Regular City Council meeting of September 3, 2024.

8. Report Upon Return from Closed Session
Action: Approved the Report Upon Return from Closed Session for the Regular City Council meeting of September 3, 2024.

9. City Investment Policy
Action: Adopted Resolution 2024-69 amending the City's Investment Policy.

10. Rancho Del Mar Paving and Utility Improvements Project Design Amendment
Action: Adopted Resolution 2024-70 approving Amendment #1 (Agreement 2024-A138) to Agreement 2023-64 with Bennett Engineering Services for design services, increasing the contract amount $19,160, for a total contract amount not to exceed $553,182, in conjunction with the Rancho Del Mar Paving and Utility Improvements Project (TR24-0300).

11. Approve Excused Absence for Council Member Aboudamous.
Action: Adopted Minute Order 2024-08 approving excused absence for Council Member Aboudamous from June 4 to December 3,2024 and authorizing the regular compensation due to

Council Member Aboudamous for the City Council meetings, former County Water District Board meetings, and American Canyon Fire Protection District Board meetings during this time period.

PUBLIC HEARINGS

There were no public hearing items.

BUSINESS

12. Wastewater Capacity Fee Deferral for SDG Commerce 217 Warehouse Distribution Center Project

Council received a Wastewater Capacity Fee Deferral for SDG Commerce 217 Warehouse Distribution Center Project staff report from City Manager Jason Holley. Mayor Garcia called for public comments. Written comments: none. Oral comments: none. The public comment period was closed.

> **Action:** Motion to adopt Resolution 2024-71 approving Wastewater Capacity Fee Deferral Agreement (Agreement 2024-A139) for the SDG Commerce 217 Warehouse Distribution Center Project (PL 21-0006) made by Vice Mayor David Oro, seconded by Councilmember Mark Joseph, and CARRIED by roll call vote.
>
> **Ayes:** Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
> **Nays:** None
> **Abstain:** None
> **Excused:** Councilmember Mariam Aboudamous

13. Newell Open Space Improvements Project (PR13-0200)

Council received a Newell Open Space Improvements Project (PR13-0200) staff report from City Manager Jason Holley. Mayor Garcia called for public comments. Written comments: none. Oral comments: none.

> **Action:** Motion to adopt Resolution 2024-72 amending the FY2024-25 Capital Budget and increasing the Project Budget from $354,235 to $610,133; awarding a construction contract (Agreement 2024-A140) to Globe Engineering Development in the amount of $401,534 and authorizing the Public Works Director to approve and execute Contract Change Orders in an aggregate amount not to exceed the Project Budget, in conjunction with the Newell Open Space Improvements Project (PR13-0200) made by Councilmember Mark Joseph, seconded by Vice Mayor David Oro, and CARRIED by roll call vote.
>
> **Ayes:** Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
> **Nays:** None
> **Abstain:** None
> **Excused:** Councilmember Mariam Aboudamous

MANAGEMENT AND STAFF ORAL REPORTS

Council received oral updates from Parks & Recreation Director Alexandra Ikeda.

MAYOR/COUNCIL COMMENTS AND COMMITTEE REPORTS

The mayor and council members provided oral reports and announced items of community interest.

FUTURE AGENDA ITEMS

14. Future Agenda Items of Note

Action: Motion to add to a future agenda Foodware Ordinance made by Councilmember Mark Joseph, seconded by Councilmember Pierre Washington, and CARRIED by roll call vote.

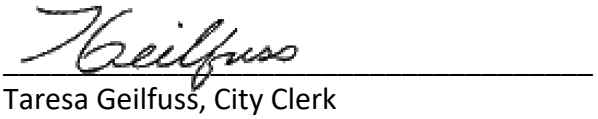
Ayes: Councilmember Mark Joseph, Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia
Nays: None
Abstain: None
Excused: Councilmember Mariam Aboudamous

ADJOURNMENT

The meeting was adjourned at 7:35 p.m.

CERTIFICATION

Respectfully Submitted,



Taresa Geilfuss, City Clerk

CITY OF AMERICAN CANYON

City Council Community Update

SEPTEMBER 17, 2024 CITY COUNCIL MEETING

Proclamations

- **Suicide Prevention Month:** Proclamation received by Prevention Director Jeni Olsen and Bilingual Prevention Specialist Arturo Garcia from MENTIS, Napa's Center for Mental Health Services
- **Recovery Month**: Proclamation received by Nathan Hobbs, the Assistant Deputy Director of Behavioral Health at Napa County Health and Human Services Behavioral Health Division

Presentations

Received a presentation from the Napa County Mosquito Abatement District on mosquite abatement

City Action

- Adopted a Resolution approving the Wastewater Capacity Fee Deferral Agreement for the SDG Commerce 217 Warehouse Distribution Center Project
- Adopted a Resolution amending the FY 2024-25 Capital Budget, awarding a construction contract to Globe Engineering Development and approving the Public Works Director to approve and execute Contract Change Orders for the Newell Open Space Improvements Project

Next time...

Join our ***October 1*** meeting to learn more about:

- Oat Hill Apartment Project Modifications
- ...and more!

View presentations, agenda packets and meeting details:

AmericanCanyon.gov/Meetings

William D. Ross
David P. Schwarz
Kypros G. Hostetter
Christina M. Bellardo

Law Offices of
William D. Ross
400 Lambert Avenue
Palo Alto, California 94306
Telephone: (650) 843-8080
www.lawross.com

Los Angeles Office:

11420 Santa Monica Blvd
#25532
Los Angeles, CA 90025

File No: 199/6

September 24, 2024

VIA E-MAIL
The Honorable Leon Garcia, Mayor
and Members of the City Council
City of American Canyon
4381 Broadway, Suite 201
American Canyon, CA 94503

Re: Report Upon Return from Closed Session; Regular City Council Closed Session Meeting of the American Canyon City Council of September 17, 2024

Dear Mayor Garcia and Members of the City Council:

This communication sets forth reportable action, if any, of the City Council ("Council") of the City of American Canyon ("City"), consistent with provisions of the Ralph M. Brown Opening Meeting Act (Government Code Section 54950, *et seq*.) resulting from the Closed Session of the Regular City Council Closed Session Meeting of September 17, 2024, consistent with Government Code Section 54957.1.

Mayor Garcia convened the Council in Open Session at 4:07 p.m. and after ascertained that there were no public comments on the matters agendized for Closed Session consideration and adjourned to Closed Session at 4:07 p.m.

There were two matters agendized for City Closed Session consideration:

1. Conference with Legal Counsel – Anticipated Litigation
   Authorized Pursuant to Government Code Section 54956.9(d)(2)
   Two (2) Matters

2. Conference with Legal Counsel – Existing Litigation
   Authorized Pursuant to Government Code Section 54956.9(d)(1)

   a. *City of American Canyon v. City of Vallejo, et al.* (Sacramento Superior Court Case No. 34-2022-00327471);

   b. *City of Vallejo v. City of American Canyon et al.* (Napa County Superior Court Case No. 23WM000055) [Giovannoni Project];

c. *City of Vallejo v. City of American Canyon et al.* (Sacramento County Superior Court Case No. 24WM000078) [Paoli/Watson Lane Annexation].

d. *City of Vallejo v. City of American Canyon et al.* (Marin County Superior Court Case No. CV0003752) [Measure K].

3. Conference with Real Property Negotiators - Authorized Pursuant to Government Code Section 54956.8

a. Property: Northeast corner of Eucalyptus Drive and Greenwing. APNs: 058-030-016000, 058-030-018-000; Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment.

b. Property Address: 25 Medeiros Lane (APN 058-270-001-000); Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment.

c. Property Address: 5750 South Kelly Road (APN's 057-090-065, 066 & 068) Agency negotiator: Jason Holley, City Manager; Under negotiation: Price and terms of payment.

With respect to the two (2) matter considered under Closed Session Agenda Item No. 1., there was no reportable action under the common law attorney-client privilege and that provided by Government Code Section 54956.9(d)(2).

With respect to Closed Session Agenda Item No. 2.a., there was no reportable action under the common law attorney-client privilege and that provided by Government Code Section 54956.9(d)(1).

With respect to Closed Session Agenda Item No. 2.b., there was no reportable action under the common law attorney-client privilege and that provided by Government Code Section 54956.9(d)(1).

With respect to Closed Session Agenda Item No. 2.c., there was no reportable action under the common law attorney-client privilege and that provided by Government Code Section 54956.9(d)(1).

With respect to Closed Session Agenda Item No. 2.d., there was no reportable action under

the common law attorney-client privilege and that provided by Government Code Section 54956.9(d)(1).

With respect to Closed Session Agenda Item No. 3.a., there was no reportable action under the provisions of Government Code Section 54956.8.

With respect to Closed Session Agenda Item No. 3.b., there was no reportable action under the provisions of Government Code Section 54956.8.

With respect to Closed Session Agenda Item No. 3.c., the Council authorized (4-0) a request for a due diligence period, except as indicated, there was no reportable action under the provisions of Government Code Section 54956.8.

Your Council concluded the Closed Session at 6:27 p.m.

In Open Session, it was indicated that a written report upon return from Closed Session consistent with Government Code Section 54957.1, would be prepared concerning the matters agendized for Closed Session.

This communication should be reviewed under the Consent portion of the Agenda of your next Regular or Special City Council Meeting.

Should you have questions concerning this Report, it may be taken off the Consent calendar when agendized in the future, or our office may be contacted in the interim.

Very truly yours,

William D. Ross
City Attorney

WDR:jf

cc: Jason B. Holley, City Manager
Maria Ojeda, Assistant City Manager
Taresa Geilfuss, City Clerk

TITLE

Contract Amendment #3 with Robert Half International Inc. for Temporary Staffing Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute Amendment #3 to Agreement No. 2022-A148 with Robert Half International Inc.

CONTACT

Maria Ojeda, Assistant City Manager
Scott Corey, Human Resources Officer II

BACKGROUND & ANALYSIS

In October 2022, the City entered into an agreement with Robert Half International Inc. for temporary staffing services (the "Agreement") to assist with an anticipated extended family leave absence within the Finance Department. The contract was entered with a maximum amount of $50,000 and an end date of June 30, 2023, under the City Manager's authority using previously budgeted funds.

In May 2023, additional prolonged staff support was identified due to a vacant position in the Finance Department, and in the Parks and Recreation Department. The City Council authorized the City Manager to execute Amendment #1 to the Agreement.

In February 2024, the City Council authorized the City Manager to execute Amendment #2 to the Agreement after more staff support was utilized in Finance and Parks and Recreation than initially anticipated, and staff support became unexpectedly necessary in the Maintenance and Utilities Department and the Human Resources Division due to retirements.

Staff has identified a need for continued staff support due to software implementation in Finance and an unfilled vacancy in the Human Resources Division. Extended medical or family based staff absences in various Departments have occurred, resulting in an immediate staffing solution that provides skilled staff quickly.

Staff requests authority to increase the total amount of the Agreement by $150,000 for a total contract not to exceed $403,400 through June 30, 2024.

COUNCIL PRIORITY PROGRAMS AND PROJECTS

Organizational Effectiveness: "Deliver exemplary government services."

FISCAL IMPACT

Appropriate funding was budgeted in the FY 2024-2025 Budget for this purpose in addition to funds available due to salary savings for Temporary Agency Services in other affected departments.

ENVIRONMENTAL REVIEW

15378(b) - The action is not a "Project" subject to the California Environmental Quality Act ("CEQA") because it does not qualify as a "Project" under Public Resources Code Sections 21065 and 21080 and in Section 15378(b) of Title 14 of the California Code of Regulations.

ATTACHMENTS:

1. Resolution - Robert Half
2. Exhibit A - Contract Amendment #3

RESOLUTION NO. 2024-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT #3 TO AGREEMENT NO. 2022-A148 WITH ROBERT HALF INTERNATIONAL INC.

WHEREAS, utilizing temporary staffing services agencies is a cost-effective way to supplement Regular and Temporary staffing during periods when sufficient City staff is unavailable due to anticipated extended absences or unanticipated staff turnover; and

WHEREAS, on October 5, 2022, the City entered into an Agreement for Temporary Staffing Services with Robert Half International Inc. (the "Agreement"), in an amount not to exceed $50,000 under the City Manager's authority to provide staff services during an anticipated extended staff absence in the Finance Department; and

WHEREAS, on May 16, 2023, the Council authorized and the City Manager executed Amendment #1 to the Agreement increasing the total contract amount to $168,000 to address additional staff support needs in the Finance Department and the Parks and Recreation Department; and

WHEREAS, on February 20, 2024, the Council authorized and the City Manager executed Amendment #2 to the Agreement increasing the total contract amount to $253,400 to address staff support needs in the Maintenance and Utilities Department and the Finance Department; and

WHEREAS, temporary staff support was anticipated in the Finance Department but additional unexpected support needs were identified in the Human Resources Division; and

WHEREAS, Amendment #3 to Agreement No. 2022-A148 would establish a total not to exceed amount of $403,400 through June 30, 2025.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of American Canyon does hereby authorize the City Manager to execute Amendment #3 to Agreement No. 2022-A148 with Robert Half International Inc., attached hereto as Exhibit "A".

PASSED, APPROVED and **ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 1st day of October 2024, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Leon Garcia, Mayor

ATTEST:

_____
Taresa Geilfuss, CMC, City Clerk

APPROVED AS TO FORM:

_____
William D. Ross, City Attorney

CITY OF AMERICAN CANYON AGREEMENT NO. 2024-____

AMENDMENT #3 TO AGREEMENT NO. 2022-A148 TO THE CITY OF AMERICAN CANYON STANDARD AGREEMENT FOR TEMPORARY STAFFING SERVICES WITH ROBERT HALF INTERNATIONAL INC.,

RECITALS

1. The City of American Canyon ("CITY") and Robert Half International Inc., have entered into an Agreement dated October 5, 2022.

2. The Agreement provides for amendments to perform specific tasks under a specific scope of services that may arise during the term of the agreement.

3. On May 16, 2023, the City executed Amendment #1 to extend the not-to-exceed amount of the contract to $168,000.

4. On February 20, 2024, the City executed Amendment #2 to extend the not-to-exceed amount of the contract to $253,400.

NOW, THEREFORE, CITY and ROBERT HALF INTERNATIONAL INC., agree as follows:

1.00 SERVICES AND COMPENSATION

ROBERT HALF INTERNATIONAL INC. agrees to provide services as listed in Attachment "A" to increase the contract amount for additional services in the amount of $150,000.00 for a total not to exceed contract amount of $ 403,400.00.

2.00 TIME OF PERFORMANCE

The services covered by this Amendment shall be performed or provided by June 30, 2025.

3.00 REMAINING PROVISIONS

All other terms of the October 5, 2022, Agreement remain in full force and effect.

Executed on _____, 2024, at American Canyon, California.

CITY:

By: _____
Jason B. Holley
City Manager

ROBERT HALF INTERNATIONAL INC.:

By: _____
Sarah Cush
Vice President

TITLE

Oat Hill Multifamily Residential Major Modification

RECOMMENDATION

Consider a Resolution approving a Major Modification to the Oat Hill Multifamily Residential Project Parcel A and B Design Permits located on the east side of Oat Hill south of Napa Junction Road (PL24-0009)

CONTACT

Brent Cooper, AICP, Community Development Director

BACKGROUND & ANALYSIS

The Oat Hill Multifamily Residential project is located on a landmark 20-acre hillside site with stunning views on the eastern slope of Oat Hill between Hess Road and the western terminus of Napa Junction Road. Visible from most areas of the city, the 2021-approved project features 291 market-rate residential units with two recreation buildings, swimming pools, and leasing offices. A photo simulation showing the project on Oat Hill is included as Attachment 2. An aerial view is included as Attachment 3. A site plan is included as Attachment 4.

The approved project topography consists of two generally flat terraces ranging approximately 80 to 185 feet above mean sea level. Parcel A (the upper terrace) and Parcel B (the lower terrace) are separated by a steep landscaped hillside. An emergency vehicle access (EVA) road connects the two terraces. The upper terrace, Parcel A will feature a pedestrian path available to the public that takes advantage of the sweeping views. A graphic depicting the trail and views is shown in Attachment 5.

Envisioned by Rick Hess in 2020, the project design was established in connection with a legislative Council decision to amend the General Plan and Zoning Designation from Industrial to Residential. A legislative decision is one where the City Council is under no obligation to approve the project - the approval rests entirely on the merits of the project. A table that lists all the 2021 City Council approvals is included as Attachment 6.

The project architecture is a Farmhouse style with distinguishing features such as a pitched roof, recessed patio areas and fiber cement board and batten accent on the third floor, three earth-tone color schemes with three exterior wall colors per color scheme. The recreation building and

accessory trash and mechanical buildings featured a standing seam roof.

The project was acquired by Russell Square Consulting in 2021, and they submitted several minor modifications over the next few years, that in total, amounted to a significant change to the project. In July 2024, staff rescinded all Minor Modification approvals and current requests and consolidated them into a Major Modification.

A Major Modification is considered by the original approval authority. In this case, the City Council approved the original project. The Planning Commission, in its role as advisor to the City Council, reviews Major Modifications and provides a recommendation.

The Planning Commission considered the Oat Hill Multifamily Residential Major Modification on July 30, 2024, August 22, 2024, and September 26, 2024. The project was continued from July 30, 2024, to August 22, 2024, because the applicant proposed further project modifications during the hearing. The August 22, 2024, meeting was continued to September 26, 2024, to provide time for the applicant to provide alternatives to deleting two ground floor windows on the 15-plex apartment building and incorporating lap siding elements onto the recreation and amenity buildings.

On September 26, 2024, the Planning Commission completed its public hearing and recommended the City Council approve fourteen Project Modifications as described in the attached Resolution of Approval (Attachment 1).

Zoning Code Major Modification Standards

Chapter 19.45 of the Municipal Code sets forth procedures for a Major Modification.

A “Major Modification," considered by the original decision-making authority (here the City Council), is a significant revision of a previously approved plan or permit (ACMC Section 19.45.020(B)). The Major Modification approval criteria, or burden of proof, is listed below:

- The modification must substantially conform to the previously approved plan. If the change is substantive, it must be equivalent to the original project design, consistent with city design and development standards and policies.
- The modification may not create substantially different impacts from the previously approved project.
- The modification may not be materially detrimental to the public health, safety, or welfare, or to property or residents in the vicinity.
- The modification must be consistent with general plan policies and exhibits.

The City Council has authority to consider any of these alternatives:

- Agree with one or more modifications; or
- Deny one or more modifications; or
- Revise the modifications; or
- Continue the hearing to a later date.

COUNCIL PRIORITY PROGRAMS AND PROJECTS

Community and Sense of Place: "Build on the strength of our local community to develop a clear 'sense of place' and establish our unique identity."

FISCAL IMPACT

N/A

ENVIRONMENTAL REVIEW

The City Council approved a Mitigated Negative Declaration for the overall project in 2021 in conjunction with the General Plan Amendments, Rezoning, Design Permits, Airport Land Use Commission Override, and Tentative Subdivision Maps. The scope of the Major Modification falls within the 2021 environmental review because there are no changes to the project that create any new environmental impacts because the overall density of the project remains unchanged and amendments to apartment buildings and accessory recreational building and amenity buildings are aesthetic in nature and support hillside stability.

ATTACHMENTS:

1. Reso Oat Hill Parcel A and B Design Permit Major Modification
2. Photosimulations
3. Aerial View
4. Site Plan
5. Public View Trail
6. City Council 2021 Oat Hill Residential Approvals

RESOLUTION 2024-XX

A RESOLUTION APPROVING A MAJOR MODIFICATION TO THE OAT HILL MULTIFAMILY RESIDENTIAL PROJECT PARCEL A AND B DESIGN PERMITS LOCATED ON THE EAST SIDE OF OAT HILL SOUTH OF NAPA JUNCTION ROAD (FILE NO. PL24-0009)

WHEREAS, on September 21, 2021, the City Council approved the Oat Hill Multi-Family Residential Parcel A Design Permit PL20-0022 for 206 dwelling units on 13.6 acres (Resolution 2021-76) and Parcel B Design Permit PL20-0023 for 85 dwelling units on 7.3 acres (Resolution 2021-77); and

WHEREAS, the project design was established in connection with a legislative Council decision to amend the General Plan and Zoning Designation from Industrial with a Commercial Overlay and Estate Residential to High Density Residential; and

WHEREAS, a legislative decision is one where the City Council is under no obligation to approve the project - the approval rests entirely on the merits of the project; and

WHEREAS, subsequent to the City Council approval, the applicant, Russell Square Consulting, submitted several Minor Modification amendments and changes to construction plans; and

WHEREAS, on July 5, 2024, after reflecting on all the existing and proposed changes since the 2021 Council approval, staff rescinded all past Minor Modifications and informed the property owner that all proposed modifications will be considered by the Planning Commission and City Council as a Major Modification application and process; and

WHEREAS, on July 30, 2024, the Planning Commission conducted a public hearing on the Parcel A and B Major Modification; and

WHEREAS, on July 30, 2024, the Planning Commission continued the public hearing to August 22, 2024 to because the applicant proposed further changes to the project; and

WHEREAS, on August 7, 2024, the applicant submitted a comprehensive list of 14 proposed amendments to the Parcel A and B Design Permits; and

WHEREAS, on August 22, 2024, the Planning Commission continued the public hearing to September 4, 2024, to receive information from the applicant on alternatives to retain a proposal to delete two ground floor windows on the 15-plex apartment building, and alternatives to incorporate lap siding elements onto the recreation and amenity buildings; and

WHEREAS, the September 4, 2024 meeting was cancelled which continued the hearing to September 26, 2024; and

WHEREAS, on September 19, 2024, the applicant submitted alternatives to retain a proposal to delete two ground floor windows on the 15-plex apartment building, and alternatives to incorporate lap siding elements onto the recreation and amenity buildings; and

WHEREAS, on September 26, 2024, the Planning Commission conducted a public hearing and recommends the City Council approve a Major Modification to the Oat Hill Project Parcel A and B Design Permit as described in Exhibit A to this Resolution and conditions of approval; and

WHEREAS, on October 1, 2024, the City Council conducted a public hearing and considered all the written and oral testimony presented at the public hearing in making its decision.

NOW, THEREFORE, BE IT RESOLVED that the City of American Canyon the City Council approves a Major Modification to the Oat Hill Project Parcel A and B Design Permit as depicted by the Planning Commission recommendation in Exhibit A which is incorporated by reference into this Resolution.

SECTION 1: CEQA

The City Council approved a Mitigated Negative Declaration for the overall project in 2021 in conjunction with the General Plan Amendments, Rezoning, Design Permits, Airport Land Use Commission Override, and Tentative Subdivision Maps. The scope of the Major Modification falls within the 2021 environmental review because there are no changes to the project that create any new environmental impacts because the overall density of the project remains unchanged and amendments to apartment buildings and accessory recreational building and amenity buildings are aesthetic in nature and support hillside stability.

SECTION 2: Design Permit Findings

A. A Major Modification application may be approved if all of the following findings are made:

(1) The modification is in substantial conformity with the previously approved plan or permit, or if the change is substantive, that the revised project is equivalent to the original project design concept in terms of consistency with city design and development standards and policies.

Proposed modifications to building elevations and exterior treatments provide an equivalent aesthetic appearance to the original approval. Additional retaining walls and larger retaining walls are required for hillside stability. Wall treatments with textured brick, textured and colored concrete, and painted concrete will help the walls blend into the hillside. Augmented landscaping also furthers reduction of the wall visibility.

(2) The modification will not create impacts substantially different from those of the previously approved project.

The proposed modifications do not increase the building height and bulk. Exterior treatments, landscaping, and hillside stability requirements are equivalent to the original approval as described in (1) above. The overall density of the project remains unchanged.

(3) The granting of the modification will not be materially detrimental to the public health, safety, or welfare, or to property or residents in the vicinity.

Amendments to apartment buildings and accessory recreational building and amenity buildings are aesthetic in nature and do not result in any reduction in standards that could impact public health, safety or welfare. The addition of retaining walls and increases in height for some retaining walls reflect new information that is discovered during hillside grading. These retaining wall revisions and additions will ensure the project contours Oat Hill in a manner that will safely accommodate the proposed apartment project.

(4) The proposed modification is consistent with the policies and exhibits contained in the general plan.

The project design modification remains in compliance with the approved project which met Parcel A RH-1 design standards and the Parcel B MDR design standards.

SECTION 2. CONDITIONS OF APPROVAL

1. The applicant shall defend, indemnify, and hold harmless the City of American Canyon ("City"), its elected officials, officers, employees, attorneys, representatives, boards, commissions, consultants, volunteers and agents from and against all claims, actions, including actions to arbitrate or mediate, damages, losses, judgments, liabilities, expenses and other costs, or proceedings against the City, its elected officials, officers, employees, attorneys, representatives, boards, commissions, volunteers, or agents to attack, modify, set aside, void, or annul an approval, conditional approval, permit, entitlement, environmental document, environmental clearance, mitigation plan, or any other document or any of the proceedings, acts, or determinations taken, done, or made prior to granting of such approval, conditional approval, permit, entitlement, environmental clearance, environmental document, mitigation plan, or other documents, by the City, including, without limitation, an action against an advisory agency, appeal board, or legislative body within the applicable limitation period.

   The obligation to defend, indemnify and hold the City harmless shall include the payment of all legal costs and attorney's fees (including a third party award of attorney's fees), arising out of, resulting from, or in connection with the City's act or acts leading up to and including approval of any environmental document or mitigation plan granting approvals to the applicant, incurred on behalf of, or by, the City, its elected officials, officers, employees, representatives, attorneys, boards, commissions, volunteers and agents in connection with the defense of any claim, action, or proceeding challenging the entire or a portion of an approval, conditional approval, permit, entitlement or any other document of any related claim.

   The obligation to defend, indemnify, and hold the City harmless shall include, but not be limited to, the cost of preparation of any administrative record by the City, staff time, copying costs, court costs, or attorney's fees arising out of a suit or challenge contesting the adequacy of a permit, approval, conditional approval, entitlement, environmental document, mitigation plan, environmental clearance, or any other document or approval related to the applicant's project.

   The City will promptly notify the applicant of any claim, action, or proceeding and will cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action, or proceeding, or the City fails to cooperate fully in the defense, the applicant shall not be responsible to defend, indemnify, or hold harmless the City.

In the event a legal challenge to a City permit, approval, conditional approval, environmental document, environmental clearance, mitigation plan, entitlement or any other document, proceeding, determination, or action related to the applicant's project is successful, and an award of attorneys' fees is granted against the City, the applicant shall be responsible to timely pay the full amount of such an award.

2. The applicant is responsible for paying all charges related to the processing of this discretionary case application within 30 days of the issuance of the final invoice or prior to the issuance of building permits for this project, whichever occurs first. Failure to pay all charges shall result in delays in the issuance of required permits or the revocation of the approval of this application.

3. Recommended plan modifications for Parcel A Design Permit PL20-0022 (Resolution 2021-76) and Parcel B Design Permit PL20-0023 (Resolution 2021-77) is incorporated into this Resolution as Exhibit A.

4. Parcel A and B CMU walls shall be painted with a weather-treated exterior paint (Sherwin Williams Virtual Taupe SW 7039).

5. Except for the CMU wall adjacent to 1000 Opus, all CMU walls shall be landscaped with shrubs that must grow to a height that screens the walls within five years from the landscape installation. If the CMU wall adjacent to 1000 Opus is visible from a public vantage point east of the project, the applicant shall also landscape the wall shrubs that must grow to a height that screens the walls within five years from the landscape installation.

6. All conditions of approval from Parcel A Design Permit PL20-0022 (Resolution 2021-76) and Parcel B Design Permit PL20-0023 (Resolution 2021-77) remain in effect.

7. Prior to the effective date of the Minor Modification Permit, the applicant and property owner shall sign the agreement to the conditions of approval. The form is available as Exhibit B.

PASSED, APPROVED and **ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 1st day of October, 2024, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____

Leon Garcia, Mayor

ATTEST:

_____
Taresa Geilfuss, CMC, City Clerk

APPROVED AS TO FORM:

_____
William D. Ross, City Attorney

Exhibit
A. Planning Commission Recommended Major Modifications
B. Applicant confirmation of conditions

EXHIBIT A

Oat Hill Residential Major Modification
Planning Commission Recommendation
To the City Council (PL24-0009)

September 26, 2024
Resolution 2024-12

1. Roof Material

Change roofing from concrete tile to Antique Black asphalt shingle.

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1

2. Roof Pitch and Ridge

Parcel A Roof pitch reduced from 4:12 to 3:12
Include Hip in roof ridge
Eliminate Dutch Gables to break up Main Ridge

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1

3. Siding & Trim Material

Approve Applicant Alternative to replace Board and Batten Siding on 3rd Floor with Fiber Cement Lap (horizontal) Siding.

Replace Fiber Cement Trim with Stucco.

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | SIDE ELEVATIONS Color Scheme #1	PARCEL A 18-PLEX | SIDE ELEVATIONS Color Scheme #1

4. Patios

Replace ground floor stucco patio with cedar railing on patio

Delete gate from patio

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1

5. Building Unit Count

Replace 12-plex to 15 plex; and Replace 17 plex to 18 plex

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
12-PLEX | FRONT ELEVATION Color Scheme #2	PARCEL A - 15-PLEX | FRONT ELEVATION Color Scheme #2
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1

6. Garage Doors

Remove windows from the rollup garage doors

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
15-PLEX | REAR ELEVATION Color Scheme #2	PARCEL A - 15-PLEX | REAR ELEVATION Color Scheme #2

7. Ground Floor Windows

Approve applicant alternative to install sound-rated windows

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1

8. Apartment Color Schemes

Replace color schemes 1 and 2.

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
17-PLEX | FRONT ELEVATION Color Scheme #1	PARCEL A - 18-PLEX | FRONT ELEVATION Color Scheme #1
	
12-PLEX | FRONT ELEVATION Color Scheme #2	PARCEL A - 15-PLEX | FRONT ELEVATION Color Scheme #2

9a. Amenity Roof, Siding & Stone Material

Replace Recreation building roof from dark bronze metal to Antique Black Shingle.
Approve Applicant Alternative to replace board and batten to fiber cement lap siding and stucco.
Replace manufactured stone with Masonry Panel System.

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
	
CLUB HOUSE | ELEVATION Color Scheme #1	CLUB HOUSE | ELEVATION Color Scheme #1
	
CLUB HOUSE | FRONT ELEVATION Color Scheme #1	CLUB HOUSE | FRONT ELEVATION Color Scheme #1

9b. Amenity Roof, Siding & Stone Material

Replace board and batten siding with stucco
Replace bronze metal roof to Antique Black Shingle
Revise windows to picture windows with mullions

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
 Front Elevation POOL HOUSE | ELEVATION Color Scheme #1	 Front Elevation POOL HOUSE | ELEVATION Color Scheme #1
 Left Elevation	 Left Elevation
 Right Elevation POOL HOUSE | FRONT ELEVATION Color Scheme #1	 Right Elevation POOL HOUSE | FRONT ELEVATION Color Scheme #1

10. Amenity Building Windows

Revise windows to picture windows with mullions

APPROVED BUILDING SUBMITTAL SET	PROPOSED BUILDING SUBMITTAL SET
 Rear Elevation CLUB HOUSE | ELEVATION Color Scheme #1	 Rear Elevation CLUB HOUSE | ELEVATION Color Scheme #1

11. Exterior Lighting Fixtures

Replace approved light fixture with the proposed fixture.

APPROVED

PROPOSED

Approve increase in MSE wall height from 6-feet to 10-feet.

12. MSE Wall at Parcel B

Tiered MSE Wall at West side of Parcel B

MSE Wall at Parcel B Driveway Entrance

Decorative Block used at MSE Walls

Approve new CMU walls with weather-proof paint and landscaping per conditions of approval in Resolution.

14. CMU Walls

CMU Wall at Parcel B

Color: Sherwin Williams 7039 Virtual Taupe - Chosen by City Staff

Locations of CMU Walls at Parcel A

EXHIBIT B
Applicant Confirmation of Conditions of Approval
Oat Hill Parcel A and B Design Permits Major Modification
(FILE NO. PL24-0009)

As shown by my signature below, I confirm that I understand and agree to abide by the conditions of approval included in the City Council Resolution dated October 1, 2024.

_____ _____
Applicant's signature Date

_____
Applicant's name

_____ _____
Property Owner's signature Date

_____
Property Owner's name

Please return signed confirmation to the City of American Canyon Community Development Department, 4381 Broadway, Suite 201, American Canyon, CA 94503

Oat Hill Residential Photosimulations

Proposed View from the Northeast Along SR 29

VIEW SIM 1

RH HESS DEVELOPMENT

OAT HILL MULTI-FAMILY

AMERICAN CANYON, CALIFORNIA

WHA

Proposed View from the East Along SR 29

VIEW SIM 2

RH HESS DEVELOPMENT

OAT HILL MULTI-FAMILY

AMERICAN CANYON, CALIFORNIA

WHA. ARCHITECTS . PLANNERS . DESIGNERS

ORANGE COUNTY . LOS ANGELES . BAY AREA

Proposed View from the East Along Theresa Avenue

VIEW SIM 3

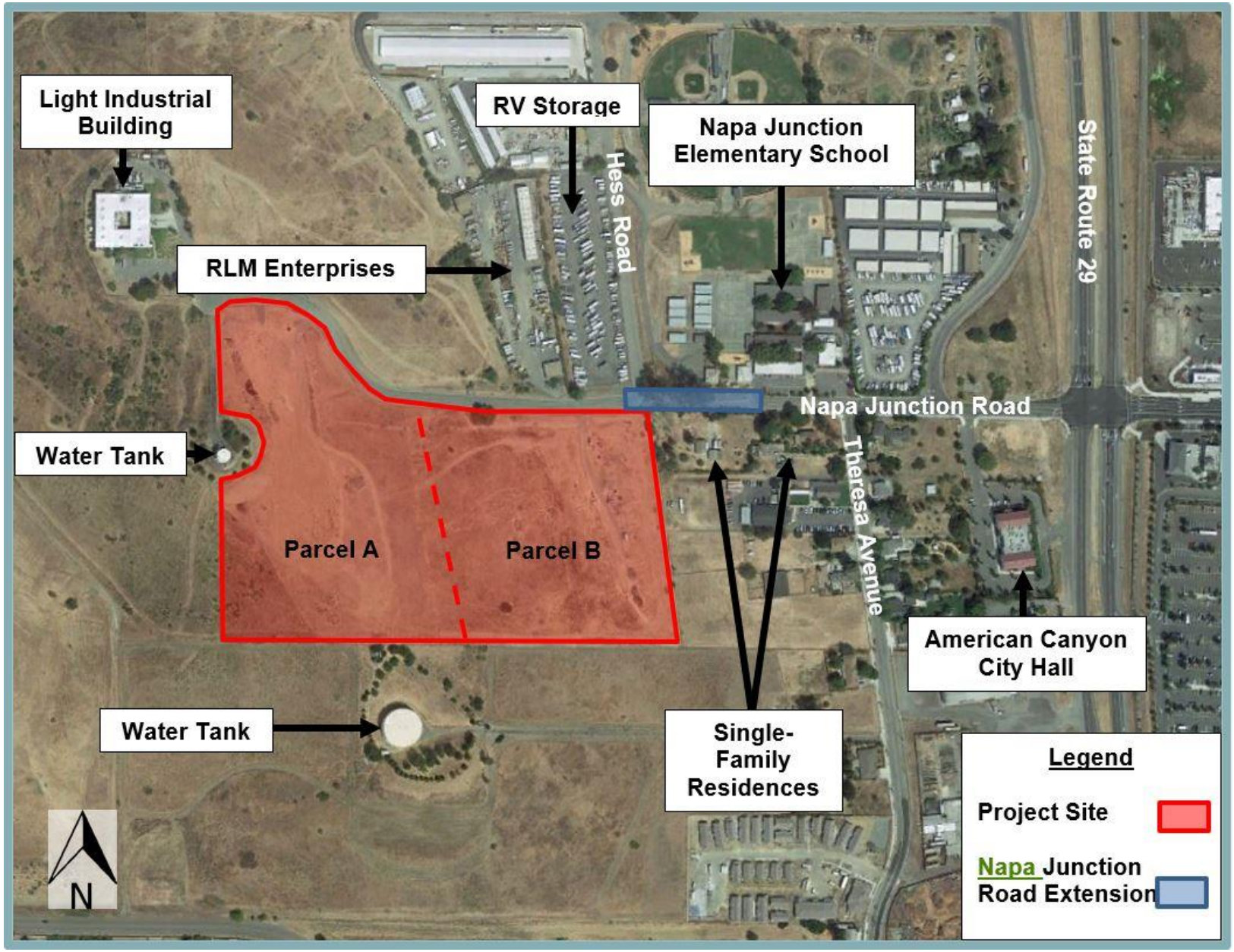
RH HESS DEVELOPMENT

OAT HILL MULTI-FAMILY

AMERICAN CANYON, CALIFORNIA

WHA

Project Site Aerial View



Project Site Plan

Project Summary

Parcel A

Gross Site Area: ± 11.3 Acres
Developable Area: ± 8.1 Acres
Total Units: 206 Homes
- (52) 1 Bdrm Units
- (108) 2 Bdrm Units
- (46) 3 Bdrm Units

Density: 18.2 DU per Gross Acre
25.4 DU per Developable Area

Parking:
Required: 438 Spaces
- (52) 1 Bedroom x 1.5 Spaces =78 Spaces
- (154) 2 or more Bedroom x 2 Spaces =308 Spaces
- (206) Guest x 0.25 Spaces =52 Spaces

Provided: 451 On-site & Off-site Spaces
428 On-site Spaces
- Garage: 157 Spaces
- Carports: 49 Spaces
- Head In: 222 Spaces

23 Off-site Spaces

Open Space
- Common Open Space: 53,571 SF
- Hillside Slope Area: 139,392 SF

Parcel B

Gross Site Area: ± 9.5 Acres
Developable Area: ± 3.6 Acres
Total Units: 85 Units
- (20) 1 Bdrm Units
- (45) 2 Bdrm Units
- (20) 3 Bdrm Units

Density: 8.9 DU per Gross Area
23.6 DU per Developable Area

Parking:
Required: 182 Spaces
- (20) 1 Bedroom x 1.5 Spaces =30 Spaces
- (45) 2 or more Bedroom x 2 Spaces =130 Spaces
- (85) Guest x 0.25 Spaces =22 Spaces

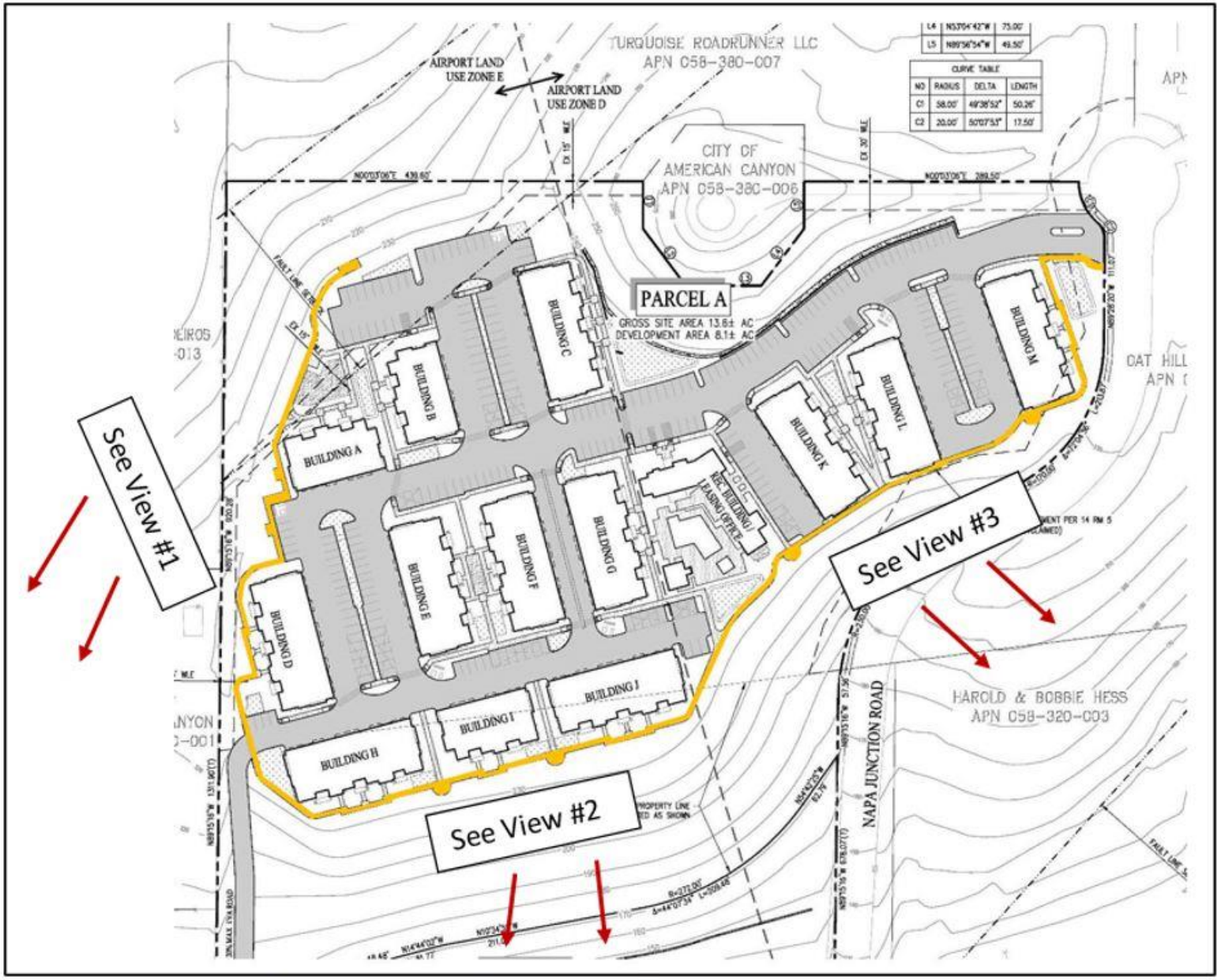
Provided: 183 Spaces
- Garage: 65 Spaces
- Carports: 20 Spaces
- Head In: 98 Spaces (9' x 18')

Open Space
- Common Open Space: 27,647 SF
- Hillside Slope Area: 257,004 SF

Notes:

1. Site plan is for conceptual purposes only.
2. Site plan must be reviewed by planning, building, and fire departments for code compliance.
3. Base information per civil engineer.
4. Civil engineer to verify all setbacks and grading information.
5. Building Footprints might change due to the final design elevation style.
6. Open space area is subject to change due to the balcony design of the elevation.
7. Building setbacks are measured from property lines to building foundation lines.

Public View Trail



View 1 – Southeast View

View #2 – East View

View #3 – Northeast View

ATTACHMENT 6

City Council Oat Hill Residential Approvals

- Resolution 2021-61 Mitigated Negative Declaration
- Resolution 2021-62 Napa County Airport Land Use Commission Overrule
- Resolution 2021-63 Parcel A General Plan Amendment
- Resolution 2021-64 Parcel B General Plan Amendment
- Ordinance 2021-05 Parcel A Zone Change
- Ordinance 2021-06 Parcel B Zone Change
- Resolution 2021-76 Parcel A Design Permit
- Resolution 2021-77 Parcel B Design Permit
- Resolution 2021-78 Parcel A Tentative Subdivision Map
- Resolution 2021-79 Parcel B Tentative Subdivision Map

TITLE

City Council Code of Conduct and Governance Protocols

RECOMMENDATION

Provide feedback on a draft City Council Code of Conduct and Governance Protocols

CONTACT

Jason Holley, City Manager
Taresa Geilfuss, City Clerk

Mark Joseph, Governance Ad-Hoc Subcommittee Member

David Oro, Governance Ad-Hoc Subcommittee Member

BACKGROUND & ANALYSIS

The City Council Code of Conduct and Governance Protocol was first established in 2007 and most recently updated in 2021.

The City Council appointed an Ad-Hoc Committee (Oro/Joseph) to prepare a new version of the document. The Council reviewed this draft at your September 3 meeting. Based on Council input that night, an updated draft is included as Attachment 1.

The Code of Conduct and Governance Protocol is designed to establish standards of behavior and operational procedures for council members, ensuring transparency, accountability, and ethical governance. Its primary purpose is to foster a professional and respectful environment, guiding council members in their interactions with each other, city staff, and the public.

The Code and Protocol outlines expectations for ethical conduct, including integrity, impartiality, and adherence to legal and procedural norms. Governance protocols cover meeting procedures, decision-making processes, and public engagement strategies, aiming to enhance the efficiency and effectiveness of municipal operations. By setting clear standards and procedures, it helps maintain public trust and promotes a collaborative and responsible approach to local government.

Staff anticipates bringing formal approval of this Protocol at your Oct. 15 meeting.

COUNCIL PRIORITY PROGRAMS AND PROJECTS

Organizational Effectiveness: "Deliver exemplary government services."

FISCAL IMPACT

Not applicable

ENVIRONMENTAL REVIEW

15378(b) - The action is not a "Project" subject to the California Environmental Quality Act ("CEQA") because it does not qualify as a "Project" under Public Resources Code Sections 21065 and 21080 and in Section 15378(b) of Title 14 of the California Code of Regulations.

ATTACHMENTS:

1. Governance Protocols 2nd Council Draft 2024-10-01 with Appendices

CITY OF AMERICAN CANYON

CITY COUNCIL CODE OF CONDUCT AND GOVERNANCE PROTOCOLS

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PREFACE

As this Code of Conduct and Governance Protocols (Code and Protocols) is read, it is hoped that a general philosophy of governance emerges: the public good is best served when the City Council and staff work together as a team; when they understand their roles and responsibilities; and when all sides understand that there is rarely a single right answer—often there is a continuum of options, from one extreme to the other. The City Council's job, with input from staff, stakeholders and the public, is to decide where to land on that continuum.

This Code and Protocols is intended to apply to elected officials (i.e. City Council Members) as well as all City Council-appointees to boards, commissions and committees. The term "Council Member" or "Member" as used herein shall be construed to apply individually to Council Members and City Council-appointees. The term "City Council" as used herein shall be construed to apply collectively to the City Council and City boards, commissions and committees, as appropriate.

INTRODUCTION

Purpose

This Code of Conduct and Governance Protocols (Code and Protocols) serves four specific and important goals:

Reflect Governance Philosophy. Articulate the City Council's philosophy on governance, including its code of conduct, roles, responsibilities, and relationships, and how it conducts its business.

Commitment to Transparency. Ensure that the public can easily review and compare the City Council's actions with its stated protocols and policies, demonstrating a commitment to transparency.

Training and Guidance. Serve as a training tool and guidance for new Council Members and serve as a reference document for the entire City Council when deliberating on current issues.

Basis for Review and Revision. Provide for future review and revisions, allowing future City Councils to examine these protocols and adapt them to evolving conditions.

Relationship between the City Council "Code of Conduct and Governance Protocols" and City Council "Policies".

The Code and Protocols detail how the City Council governs and performs its duties as elected officials – essentially, "how the City Council *collectively* conducts business" and "how Council Members *individually* conduct themselves."

In contrast, City Council "Policies" outline the entire City Council's positions on various issues, from finance to customer service to economic development. An example list of common Policies is shown in the Appendix.

While the Code and Protocols are expected to remain consistent over time, they can be amended as necessary. City Council Policies, however, are expected to evolve more regularly in response to changing circumstances.

City Council Policies are further distinguished from Administrative Policies and Procedures which are proffered by the City Manager and not subject to City Council approval, provided they are consistent with the City Council's protocols and policies.

Future Changes

The Code and Protocols are adopted by Ordinance and incorporated into the American Canyon Municipal Code (ACMC). They may be modified according to the process established by the Ordinance.

SECTION ONE: AMERICAN CANYON'S VISION, MISSION, AND VALUES

American Canyon's Vision, Mission and Values listed below were by the City Council in 2013, after two years of community engagement. The City Council reconfirmed the Mission, Vision and Values in 2022 and 2023. The Community will change as it grows, and every 5-10 years, the City Council should re-examine the Vision, Mission and Values.

Our Vision.

The Vision Statement expresses future desire. It reflects what the Community wants to become. This Vision drives the work the City of American Canyon does, guides how business is done, and informs the priorities pursued.

Our Mission.

The Mission Statement expresses the purpose of the primary organization supporting the Community's Vision, namely the City of American Canyon. It fundamentally defines what the organization stands for and what we do.

The following core and strategic values express how the Community expects to be served by the City of American Canyon.

Our Core Values – How We Do Business

Fiscal Responsibility**.** We manage our resources wisely to ensure long-term financial stability and sustainability. Our decisions are driven by careful planning and prudent management to achieve optimal outcomes for our stakeholders.

Professional Excellence**.** We strive for the highest standards in our work, continuously improving our skills and knowledge. Our commitment to excellence ensures that we deliver superior results in every endeavor.

Transparency & Accountability**.** We operate with openness, providing clear and honest communication. We hold ourselves accountable for our actions, ensuring that our stakeholders can trust our processes and outcomes.

Customer Focus**.** Our customers are at the heart of everything we do. We are dedicated to understanding their needs and exceeding their expectations through exceptional service and innovative solutions.

Integrity. We conduct our business with the utmost honesty and ethical standards. Integrity guides our decisions and actions, fostering trust and respect with our clients, partners, and community.

Our Strategic Values – How We Get Things Done

Creativity and Innovation**.** We encourage creative thinking and embrace innovative solutions to stay ahead in a dynamic environment. Our culture of innovation drives us to explore new possibilities and improve our services continually.

Collaboration and Teamwork. We believe in the power of working together. By fostering a collaborative environment, we leverage diverse perspectives and talents to achieve our goals and deliver exceptional results.

Leadership. We lead by example, inspiring others through our actions and decisions. Our leadership is characterized by vision, courage, and a commitment to doing what is right.

Community Engagement. We actively engage with our community, building strong relationships and contributing positively to society. Our community involvement reflects our dedication to social responsibility and collective progress.

Results Oriented. We focus on delivering tangible results that drive success. Our approach is disciplined and goal-driven, ensuring that we achieve our objectives efficiently and effectively.

SECTION TWO: CODE OF CONDUCT

Code of Conduct

To promote equitable, principled, and responsible governance at the local level, the City of American Canyon adopts the following Code of Conduct for Council Members:

1) Comply with the Law – City Council Members shall adhere to the legal requirements of the United States of America, the State of California, and the City of American Canyon while carrying out their official responsibilities. These requirements encompass, among other things, the United States and California Constitutions, laws and regulations pertaining to conflicts of interest, election campaigns, financial disclosures, employer obligations, and transparent government processes as well as city ordinances and policies. Members shall comply with both the explicit rules and the underlying principles of governmental operations.

2) Act in the Public Interest - The foremost responsibility of individuals representing American Canyon is the public interest. City Council Members shall prioritize the collective welfare of the community over any personal or private concerns. They will ensure equitable and impartial treatment for all individuals, claims, and matters presented to the City Council.

3) Personal Conduct – City Council Members must maintain the highest standards of professional and personal conduct, steering clear of any actions that might be seen as improper. They should abstain from engaging in abusive behavior, making personal accusations, or launching verbal assaults on the character or intentions of fellow Members, staff, or the public. As esteemed community representatives, Members are expected to exhibit a personal and professional demeanor that enhances the reputation of the legislative body and reflects positively on the entire City. Public office shall be used for the betterment of the community, rather than personal enrichment.

4) Respect for Process – City Council Members will perform their duties in accordance with the processes and rules of order established by the City Council governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions by City staff. The City Council acts as a collaborative decision-making body. Once the City Council, acting as a body, has reached a decision, individual Members will respect and support the collective decision, regardless of their individual vote on the matter.

5) Conduct During Public Meetings – City Council Members are prepared, listen courteously and attentively to all public discussions before the body, and focus on the business at hand. Members shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or otherwise interfering with the orderly conduct of meetings. Public discussions and procedures shall be conducted transparently in an atmosphere of respect and courtesy. Members shall keep an open mind and consider all written and public testimony first, before making a decision.

6) Ethics Training – City Council Members shall participate in ethics training promptly after assuming office and periodic thereafter as prescribed by law. Members shall provide the certificate of attendance to the City Clerk.

7) Policy Role of City Council – City Council Members will respect and adhere to the Council-Manager form of government. The City Council determines City policies with the advice, information, and analysis provided by the public, boards, commissions, committees and staff. Members will not interfere with the administrative functions of the City or the professional duties of City staff.

8) Independence of Boards, Commissions and Committees - Preserving the autonomy of boards, commissions, and committees in providing unbiased advice during the public decision-making process is essential. City Council Members shall refrain from using their positions to inappropriately sway the deliberations or outcomes of board, commission, and committee proceedings and shall exhibit independence, impartiality, and fairness in their decisions and behaviors.

9) Positive Work-Place Environment – City Council Members will support the maintenance of a positive and constructive work-place environment for City employees and for citizens and businesses dealing with the City.

10) Staff Relations - All requests of City staff should be directed to the City Manager. All concerns or complaints regarding staff should be directed to the City Manager, unless the complaint relates to the City Manager. In this instance, the concern should be directed to the City Attorney for review.

11) To be Revised Based on legal research by City Attorney

12) Conflict of Interest – City Council Members shall refrain from acting upon conflicts of interest and in a manner prescribed by law, which generally requires Members:
    a) Disclose their financial investments, real property holdings, income sources, and gifts.
    b) Refrain from leveraging their official positions to influence decisions involving financial interests or personal relationships.
    c) Not accept any gift, grant or contract contingent upon a specific action by the City Council.
    d) Refrain from any investment or monetary interest in any contract with the City.
    e) Seek advice from the City Attorney and/or the City Manager prior to any conduct that may be consistent with this provision.

13) Incompatible Employment – City Council Members are prohibited from any private employment, or render services for private interest, when such employment or service is incompatible with proper discharge of their official duties or would tend to impair their independence of judgment or action in the performance of those duties.

14) Disclosure of Confidential Information – City Council Members are prohibited from disclosing confidential information nor shall they use such information to advance their financial interests.

15) Ex-Parte Communications – City Council Members are expected to openly disclose substantive and pertinent information - including all *ex-parte* communications - they may have acquired from external sources unrelated to the public decision-making process.

16) Political Participation and Advocacy – City Council Members may engage in political activities. However, if a Member chooses to adopt a stance on a political matter, they must proactively ensure the public is aware of the clear differentiation between their personal opinions and the City Council's positions. While Members may use their title while engaging in political activities, they must explicitly state that they are not representing the City nor the City Council. Moreover, Members will publicly respect and support collective City Council decisions, regardless of their individual vote or individual political stance on the matter. Members shall represent the official policies or positions of the City Council to the best of their ability when designated as delegates for this purpose.

17) Use of Public Resources - Members are prohibited from utilizing public resources, such as City staff time, equipment, supplies, or facilities, for personal or political gain, or to support campaign activities for candidates or ballot measures, unless those resources are available to the public. Moreover, they are not permitted to use the City's name or logo to endorse any political candidate or business.

Implementation, Compliance and Enforcement

The Code of Conduct outlines standards of ethical conduct expected for City Council Members and is intended to be self-enforcing. Members are expected to have a thorough understanding of it and adhere to its provisions. Members bear the primary responsibility for ensuring these ethical standards are understood and upheld. The Code of Conduct will be integrated into the standard orientations for City Council candidates, applicants seeking positions on boards, commissions, and committees, as well as newly elected and appointed officials.

The Mayor, in consultation with the City Manager and City Attorney, will be responsible for addressing a City Council Member who violates the Code of Conduct. The Vice Mayor will be responsible for addressing the Mayor in the event of a violation of any of the above provisions.

If an informal discussion does not resolve the issue, a more formal approach may be considered. Any City Council Member may seek to have another Member censured at a regular City Council meeting. The City Council may impose sanctions on a Member(s) whose conduct does not comply with the Code and Protocols, such as reprimand, formal censure, loss of seniority, or committee assignment. Prior to the imposition of any sanctions the City Council shall follow applicable due process procedures with respect to the affected Member.

Statement Of Commitment

Members of the American Canyon City Council and the Council's appointees to various commissioners and boards shall sign a Statement of Commitment, agreeing to uphold the Code of Conduct.

_____

Name, Position Date

SECTION THREE: ROLES, RESPONSIBILITIES AND RELATIONSHIPS

City Council Roles and Responsibilities

Vision and Strategy. Effective organizations are proactive and anticipate issues before they escalate into crises. Organizational leaders must be able to see "the Big Picture." The City Council's primary role is to create a vision for the future and develop strategies to achieve it. In this capacity, City Council should rely on the technical expertise of staff and the input of the community. The City's General Plan is the appropriate document for articulating this vision and strategy.

Leadership and Service. Leadership and service are traditional roles of any elected body. Community service and staying engaged with the public are critical elements. Symbolic gestures, such as proclamations or attendance at annual events, are important parts of the job. Equally important is leading by example. The public's perception of city government is often a reflection of its elected officials; City Council Members need to reflect this in their actions and statements.

Policies and Priorities. The City Council's primary role is to establish policies and set priorities for city services and functions. This is often challenging due to limited funding, which makes it difficult to meet all goals.

In making decisions, the City Council relies on having various options to consider. Staff provide analysis and alternatives for deliberation, while input from the community and stakeholders ensures that decisions reflect community values. It's also essential to weigh opportunity costs, as allocating resources to one priority limits funding for others.

Accountability and Oversight. The goal of accountability is to ensure success, rather than punish failure. The City Council needs to set standards and deadlines, define what success looks like, and hold staff accountable for achieving those standards and deadlines. Regular status reports are critical to track progress and develop strategies to correct any shortcomings.

Effective oversight requires a strong understanding of city services and the issues surrounding their delivery. City Council Members are expected to learn as much as they can about city programs and receive at least an annual report from the various City Departments.

The use of outside experts is encouraged. These technical experts can serve as a "second set of eyes" and may be effective in evaluating large or complex projects, potential legal conflicts, and other circumstances as warranted.

Ethical and Fiduciary Responsibilities. Ethical standards go beyond mere compliance with the law. The City Council needs to conduct itself in a manner that is above reproach. Additionally, the City Council must recognize its financial responsibility to the community. Residents, visitors, and businesses pay taxes and fees, often without the right to decline; therefore, ensuring that these funds are spent in the most efficient, productive, and equitable manner possible is one of the City Council's main responsibilities.

Mayor's Role. The Mayor is directly elected by the voters to serve as the head of the City Council. The Mayor chairs the City Council meetings, is involved in setting the agenda with the City Manager, and often acts as the ceremonial leader of the community. Additionally, the Mayor may take on a leadership role beyond ceremonial duties, such as delivering an annual State of the City address or outlining the city's priorities for the upcoming year. In this capacity, the Mayor should collaborate with the rest of the City Council to set these priorities.

Vice-Mayor's Role. The Vice-Mayor is selected by the rest of the City Council and generally serves for a 12-month period. The Vice-Mayor's primary role is to fulfill the duties of the Mayor in their absence. The Vice-Mayor is responsible for scheduling regular performance reviews of the City Manager and other officials reporting directly to the Council.

City Council Relationships

City Council and the City Manager. The relationship between the City Council and the City Manager is the most critical, insofar as the City Council's direction is achieved primarily through the City Manager. While the City Council sets policy and staff administer it, the distinction can often blur. For example, the City Council relies on staff for policy analysis and alternatives; the quality of this analysis influences the City Council deliberation and action. Similarly, the City Council needs a basic understanding of how city services and programs are implemented to provide proper oversight and ensure successful policy implementation.

The City Manager is the Chief Executive Officer of the City, responsible for overseeing the day-to-day operations and implementing the policies set by the City Council. The City Manager acts as a bridge between the City Council and staff, ensuring City Council directives are effectively executed and that City services run smoothly. Key responsibilities include:

Administration of City Departments: The City Manager supervises all city departments and staff, ensuring that they operate efficiently and deliver services effectively. This involves managing budgets, overseeing personnel, and coordinating activities across different departments.

Policy Implementation: The City Manager translates the policies and goals established by the City Council into actionable plans. This includes preparing detailed reports, recommending policy initiatives, and ensuring that City Council decisions are executed in accordance with legal and procedural requirements.

Budget Preparation and Management: The City Manager is responsible for preparing the City's budget, working with finance staff to develop a financial plan that reflects the priorities of the City Council. This includes monitoring revenue and expenditures, ensuring fiscal responsibility, and making recommendations for budget adjustments as needed.

Advisory Role: The City Manager provides the City Council with expert advice and information to aid in decision-making. This involves conducting research, analyzing data, and offering recommendations on a wide range of issues affecting the City.

Community Relations: Acting as a representative of the City, the City Manager engages with residents, businesses, and other stakeholders to address concerns, provide information, and foster positive relationships within the community.

Crisis Management: In times of emergency or crisis, the City Manager plays a key role in coordinating response efforts, managing resources, and communicating with the public and other agencies to ensure effective and timely resolution.

City Council and the City Attorney. The City Attorney provides legal counsel and representation for the City government. This position is essential for ensuring that the City's operations and policies comply with legal standards and that the City is protected from legal risks. Key responsibilities include:

Legal Advice and Counsel: The City Attorney provides legal guidance to the City Council, City Manager, and various city departments on a wide range of issues such as municipal regulations, contracts, land use, and employment matters, ensuring that the City's actions and decisions adhere to the law.

Drafting and Reviewing Legal Documents: The City Attorney is responsible for drafting and reviewing legal documents, including ordinances, resolutions, contracts, and agreements. This ensures that these documents are legally sound and protect the City's interests.

Representation in Legal Matters: The City Attorney represents the City in legal proceedings, including lawsuits and administrative hearings. This involves preparing legal arguments, presenting cases, and negotiating settlements to safeguard the City's legal and financial interests.

Compliance and Risk Management: The City Attorney helps the City comply with federal, state, and local laws, regulations, and ordinances. They also identify and mitigate potential legal risks, providing advice on how to avoid or address legal issues that may arise.

Training and Education: The City Attorney provides training and educational sessions to City officials and staff on legal issues relevant to their roles. This helps ensure that City employees are aware of legal requirements and best practices.

Public Records and Transparency: The City Attorney works with the City Clerk to ensure compliance with public records laws and transparency requirements, helping the City manage requests for public records and maintain open communication with the public.

Ethics and Conduct: The City Attorney provides guidance on ethical issues and conduct standards, helping to maintain integrity within City operations and addressing any allegations of misconduct.

City Council and Commissions. Commissions exist to help distribute the workload that would otherwise fall to the City Council. They are advisory to the City Council, which should rely on Commissions to study matters within their purview and make recommendations. Staff provide administrative and technical support to the Commissions as needed.

At least one joint meeting between the City Council and each Commission should be scheduled annually, focusing on broad policy issues and working relationships rather than specific action items. Other joint meetings can be convened to address specific topics.

The City Council shall follow solicit candidates for Boards and Commissions in a manner consistent with State law ("Maddie Act"). Candidates who have participated in the leadership programs such as Citizen's Academy and Leadership Napa Valley are preferred. Candidates will be screened by the City Council through a process that may be established and modified as appropriate. Individuals selected will serve at the City Council's pleasure, with the possibility of reappointment at the end of their terms.

City Council and the General Public. The City Council represents the best interests of the public, requiring active and engaged participation in the community. This also means that City Council actions may sometimes be unpopular, particularly regarding fiscal matters or land use decisions. The City Council must provide a clear and consistent rationale for its decisions, ensure transparency in its actions and the data relied upon, and offer ample opportunity for public debate.

City Council and Outside Jurisdictions/Agencies. City Council Members serve on several outside agencies, generally commissions or committees that are countywide in nature. In these cases, City Council Members are expected to represent the best interests of the community, not their own self-interests. Members are responsible for reporting on the actions of the outside bodies on which they serve. Depending on the issue, a Member may request that a topic be scheduled for the full City Council to consider.

The City Council's goal is to establish positive and cooperative relationships with other jurisdictions. Either individually or collectively, the City Council should be involved in regional bodies such as the Association of Bay Area Governments (ABAG) and the League of California Cities (CalCities).

SECTION FOUR: GOVERNANCE

Ensuring that the City is well run and addresses issues before they become problems is the essential responsibility of the City Council and staff. This is best accomplished by setting goals, strategies and key initiatives; efficiently allocating scarce resources; and tracking progress towards accomplishing those goals. In addition, City Council can delegate its responsibilities to committees and commissions.

Goals, Strategies and Key Initiatives

Setting Goals and Strategies is a primary City Council function. Goals represent actionable expressions in support of Community's Vision, Mission and Values, while Strategies are concrete ideas to support the City Council's Goals.

The image below expresses the hierarchy between the Community's Vision, Mission, Values, the City Council's Goals and Strategies, and the Key Initiatives and day-to-day tasks undertaken by staff.

Our Goals

Community and Sense of Place
Build on the strength of our local community to develop a clear 'sense of place' and establish our unique identity.

Economic Development & Vitality
Attract and expand diverse business and employment opportunities.

Infrastructure
Develop and maintain infrastructure resources to support sustainable growth.

Organizational Effectiveness
Deliver exemplary government services.

Outdoors and Recreation
Expand opportunities for use of outdoor recreation and an active and healthy lifestyle.

Public Safety
Ensure American Canyon remains a safe community.

Sustainability
Demonstrate leadership in environmental sustainability.

Transportation
Improve the transportation network within the City to alleviate congestion and enhance the quality of life for the community.

Goals. The City Council has the following goals, which are given equal weight and priority:

- ***Public Safety**: Ensure that American Canyon remains a safe community.*
- ***Community and Sense of Place**: Build on the strength of our local community to develop a clear sense of place and establish our unique identity.*
- ***Economic Development and Vitality**: Attract and expand diverse business and employment opportunities.*
- ***Outdoors and Recreation**: Expand opportunities for use of outdoor recreation and an active lifestyle.*
- ***Transportation**: Improve the City's transportation network to mitigate traffic and enhance the quality of life for the community.*
- ***Infrastructure:** Develop and upgrade infrastructure resources to support sustainable growth.*
- ***Quality Services & Organizational Effectiveness**: Deliver exemplary government.*
- ***Environmental Sustainability**: Demonstrate leadership in environmental sustainability.*

Strategies. Strategies are not measurable and do not have a finite conclusion but should have a 3 to 5-year horizon. Each goal should have between 2 and 5 strategies. Strategy development is coordinated between the City Council and staff.

Key Initiatives. Key Initiatives are specific actions achievable within a 12-to-24-month timeframe. They have an identifiable start and finish, and in some instances, may be led by 3rd parties. Staff proposes a set of initiatives as part of a recurring process each year, and then tracks their implementation throughout the year, reporting back to City Council as necessary.

Although not expressly identified in the Protocols, the Strategies and Key Initiatives can be found in the "Strategic Work Plan" which is updated every 12 to 24 months.

Budgeting with Limited Resources

City resources will always be limited, so setting priorities is essential. The City Council should solicit input from the public, staff and other stakeholders in determining these priorities. Once priorities are set, the City Council should adopt a budget with sufficient staffing and resources. Lower priorities can be deferred until later or when additional resources become available. This process ensures that priorities are more likely to be accomplished and helps avoid overloading staff with too many priorities. If a more critical issue arises, the City Council can adjust its priorities and timelines accordingly.

Ensure Accountability and Tracking Progress

As the Chief Executive Officer, the City Manager's effectiveness is central to achieving Council goals and priorities. As such, evaluating the Manager's performance (along with any other City Officials reporting directly to the City Council) is perhaps the single most important task of the City Council.

Annual Performance Reviews. The City Council reviews the performance of all City Officials reporting to the Council (City Manager and City Attorney) annually. Regular "check-ins" should also be scheduled to ensure ongoing performance and alignment with goals. The review process should evolve over time, reflecting the incumbent's experience in their position. Initial reviews aim to confirm that the employee possesses the necessary skills, knowledge, and abilities. Subsequent reviews should focus on the accomplishment of projects and priorities set during the previous review. The performance review process begins with a written review which is presented to the employee, followed by a general discussion between the City Council and the City Official.

A review document that ranks specific attributes based on general categories should be used. This document will include an overall ranking and space for comments, allowing Members to provide examples supporting their rankings. Each Member will complete their own review, which will then be consolidated and presented to the employee.

The annual review should serve as the basis for determining the employee's compensation. Salary increases will be based on the employees' success in achieving their goals. Employees covered by an employment contract will follow these guidelines. However, if a conflict arises between the employment contract and these guidelines, the terms of the contract will prevail.

Monitoring Progress. The City Council should meet at least annually with staff to review the previous year's progress, adjust priorities as needed, and improve working relationships between City Council Members and between the City Council and staff. Part of this strategic planning should involve identifying the milestones of key initiatives in the upcoming year and a schedule to review their progress more frequently.

In addition, regular reports on key initiatives and capital projects should be added to the City Council Agenda, to provide both the City Council and the general public updates on progress made and issues that may need to be addressed by City Council action.

Council Committees

City Council Standing Committees. Standing Committees are comprised of two (2) City Council Members who make specific recommendations to the full City Council. Committee Members are responsible for reporting their ongoing activities during City Council meetings. Standing Committee meetings are coordinated by the City Manager and may be called by either Member assigned to the committee. The City Manager assigns staff to support Standing Committees. Standing Committees are subject to public meeting requirements.

City Council Ad Hoc Committees. Ad Hoc Committees are comprised of two (2) City Council Members who make specific recommendations to the full City Council. Ad Hoc Committees are formed by the City Council on an "as needed" basis with a clearly defined purpose and term. Ad Hoc Committees are single-purpose, and meetings are held as needed. Once the Ad Hoc Committee has completed its work, it is disbanded. Committee Members are responsible for

reporting their activities during City Council meetings. Ad Hoc Committee meetings are coordinated by the City Manager and may be called by either Member assigned to the committee. The City Manager assigns staff to support Ad Hoc Committees. Ad-Hoc Committees are not subject to public meeting requirements.

City Council and Citizen Advisory Bodies. The City Council may appoint one or more "citizen advisory bodies". These boards, commissions and committees exist to help distribute the workload that would otherwise fall to the Council. They are advisory to the City Council, which should rely on these bodies to study matters within their purview and make recommendations. Staff provide administrative and technical support to these bodies as needed. The City Manager will schedule regular "joint meetings" between the City Council and these bodies to focus on broad policy issues, work plans, and working relationships. The City Clerk will solicit candidates for these bodies, who will be screened by the City Council. Individuals selected on these bodies serve at the City Council's pleasure and may be removed at any time for any reason – including but not limited to - violations of the Code and Protocols.

SECTION FIVE: MEETINGS

State law requires the City Council to conduct business and make decisions together as a group, rather than as individuals. Generally, the group is required to meet in a manner that is "open to the public" instead of "behind closed doors". These "Public Meeting" requirements generally apply to citizen advisory bodies too, regardless of whether they are decision-making or advisory in nature.

What is a "Public Meeting" (aka the "Brown Act")?

When a majority of the City Council gathers to hear, discuss or deliberate topics, a "meeting" occurs – regardless of whether the Members intended upon having a meeting. The City Council may only conduct lawful meetings and to be lawful, a meeting must be noticed, have an agenda, include public participation, and follow other procedural rules.

Importantly, meetings need not occur at the same time or place. For example, a private email from one City Council Member to the entire Council might (inadvertently) become a "meeting" if two other Members respond at a later time and date. However, since the procedural rules about notice and participation cannot be followed, this (email) meeting would not be lawful. This standard applies for all scenarios by which a majority of Members uses any communication technology (telephone, text message, e-mail, blog, social media, etc.) to hear, discuss or deliberate topics within the City Council's purview.

In addition, interaction between individual City Council Members can (inadvertently) become meetings too. For example, a private email exchange from one Member to another could later become a meeting if one of the Members then forwards the email exchange to a 3rd Council Member, who then initiates a response and exchange back with that Council Member. In this case, a "serial meeting" can occur. Serial meetings are unlawful because there is no way to notice such meetings or to provide for public participation.

Something as simple as pressing "Reply All" to an email sent by City staff to all Members can inadvertently trigger such a serial meeting violation. For example, if your "Reply All" message tries to convince other Members to join your point of view on an issue could become unlawful because Members are considering an issue outside of the public's view.

State law also prohibits Members from using social media platforms to hold meetings. You may not respond to another Member's social media posts regarding items in Council, which prohibition includes even a thumbs up or emoji indicating agreement or disagreement.

Although Members may attend a purely social gathering or attend conferences or seminars, they must take care <u>not</u> to discuss City business among themselves.

Persons with matters pending before City Council may approach individual Members to discuss matters in private. It is up that Members sole discretion whether to honor the request, but Members must remember they are acting in an official capacity if they do and must disclose the

occurrence all private discussions to ensure the City Council has access to all resulting information.

There are civil remedies and criminal misdemeanor penalties for violations of the Brown Act. The civil remedies include injunctions against further violations, orders nullifying any unlawful action and orders determining the validity of any rule to penalize or discourage the expression of a Member. Criminal penalties may result if a person is found guilty of a wrongful deliberate intent to deprive the public of information to which it is entitled under the Brown Act.

The most effective approach to prevent these penalties is to hold the City Council's meetings in a public forum, stick to the agenda items, and consult the City Attorney, City Manager or City Clerk if you have any uncertainties regarding whether an action might violate the Brown Act.

City Council Meetings

The purpose of City Council Meetings is to conduct City business. Matters not on the Agenda are not discussed. City Council Members prepare for City Council Meetings by reviewing the *entire* Agenda Packet and informing the City Manager of any questions, comments or concerns prior to the City Council Meeting. While City Council Meetings follow parliamentary procedures, they also maintain a natural, respectful flow, allowing for public input and reasonable deliberations.

Regular City Council Meetings. Regular meetings are held on the first (1st) and third (3rd) Tuesdays of the month. Closed Session starts at 5:30 PM, with Open Session beginning at 6:30 PM. Meetings are adjourned by 10:00 PM unless extended by a majority vote.

Special City Council Meetings. Special meetings may be held at any date or time following a 24-hour notice by the Mayor or a majority of City Council Members. Only the matters in the notice may be considered.

Meeting Calendar. A calendar of next year's Regular City Council Meetings is adopted by the City Council at the end of each calendar year. Additional Special City Council Meetings may be scheduled as needed throughout the year.

Attendance. City Council Members are expected to attend all Regular and Special City Council Meetings. Attendance is defined as being marked "present" during Roll Call and remaining present until the meeting is adjourned. Members who do not attend a City Council Meeting are deemed "absent". The City Clerk is responsible for tracking Member attendance.

Excused Absences. To be eligible for an "Excused Absence" from a Regular City Council Meeting, the requesting City Council Member must notify the Mayor and City Manager at least 24 hours prior to Roll Call. To be eligible for an "Excused Absence" from a Special City Council Meeting, the requesting Member must notify the Mayor and City Manager prior to Roll Call. Assuming requisite prior notification occurs, the Mayor shall grant an Excused Absence without further inquiry. However, the Mayor may not grant more than four (4) Excused Absences per calendar year (per Member). After the fourth Excused Absence, the City Council must determine whether

reasonable circumstances exist to grant any Member a fifth (5th) (or more) Excused Absence. Upon being granted an Excused Absence, the requesting Member will be compensated in the usual manner provided they have been briefed by the Mayor or City Manager on the matters discussed during the Excused Absence.

Unexcused Absences. City Council Members who do not attend a City Council Meeting or fail to provide the required notice are deemed to be "Unexcused". City Council Members are ineligible for compensation after three (3) or more Unexcused Absences in any calendar year. Compensation will be withheld on a pro-rata basis each month the Council Member is deemed to have 4 or more Unexcused Absences in a Calendar Year. In addition to withholding compensation after three (3) or more Unexcused Absences, the Member may also be sanctioned by the City Council for violation of the Code and Protocols.

Teleconferencing. City Council Members are expected to attend all Regular and Special City Council Meetings in person. Notwithstanding this expectation, there may be instances where a Member chooses to attend a City Council Meeting remotely by phone or video conference (ie. "teleconferencing"). Attending a City Council Meeting remotely can impose a burden on staff and the City Council. Instances of teleconferencing are expected to be limited and a Member's desire to attend planned out well in advance of the meeting. Procedures for remote City Council Meeting attendance are prescribed by State law and it is the remote-attending Member's responsibility to ensure compliance with State law.

Quorum**.** A City Council majority constitutes a quorum, with motions passed 2-1 if only three Members attend. However, certain actions, such as adopting ordinances and approving payment orders, require three affirmative votes. If a majority is disqualified due to conflicts of interest, the City Council selects Members by lot or other impartial means to form a quorum.

Participation and Voting Required. A Member in attendance at a City Council meeting is required to participate in each agenda item and then vote when called upon by the City Clerk. If the Member believes they have a disqualifying conflict of interest, they must publicly explain the nature of their conflict and then remove themselves from the City Council Chambers prior to the item being considered so they will be considered to have abstained from voting. A detailed list of disqualifying conflicts of interest is shown in the Appendix. Importantly, having to make a difficult or unpopular decision is not a disqualifying conflict of interest or basis for abstention.

Rule of Necessity ("Legally Required Participation"). If a majority of the City Council shall be disqualified to vote on a matter by reason of actual or apparent conflict of interest, the City Council shall select by lot or other means of random selection, or by such other impartial and equitable means as the City Council shall determine, that number of its disqualified Members which, when added to the Members eligible to vote, shall constitute a quorum. Those Members may vote but not discuss.

Minutes. "Action minutes" prepared by the City Clerk's Office represent the official summary of the City Council's actions. Video recordings supplement the minutes. However, when City

Council action is not taken but direction to staff is provided, the specific direction is included in the minutes to avoid misunderstandings and ensure the direction is implemented.

Agenda-Setting Process. The City Clerk maintains a twelve-month rolling calendar of future agenda items of which the City Manager is generally responsible for coordinating and assigning the respective dates for those items. This calendar is available for review by City Council Members by request of the City Manager. Each City Council Meeting Agenda also includes a list of notable future items.

City Council-Requested Items. Members may request future agenda items. This first should be requested informally through consultation with the City Manager and then, if necessary, based on formal consensus of the Council.

Agenda Packet Preparation & Delivery. The agenda contains topics for consideration. The City Clerk, in consultation with staff, prepares a "packet" of information containing all the supporting documents for each agenda item (Agenda Packet). The Agenda Packet is delivered electronically to Members no later than 5:00 p.m. on Friday preceding the Tuesday meeting to which it pertains. The Agenda Packet is only provided in an electronic format. Once the Agenda Packet is distributed to the Members, it is made available to the public.

Agenda Posting. The City Clerk is responsible for posting regular meeting agendas at least 72 hours prior to the meeting. Agendas shall be physically posted on the bulletin board outside of City Hall and electronically posted at the Virtual City Hall. Agendas are also electronically delivered to those who have registered to receive them.

Agenda Order. The Mayor conducts the meeting in the order shown on the agenda or as otherwise modified by the City Council.

Meeting Decorum. To ensure proper decorum, the City Council enforces measures to minimize interruptions, such as requiring cellular phones and pagers to be turned off or set to vibrate. Public input is time-limited and should occur prior to Council Member comment or deliberation. Council Members are encouraged to be concise in their remarks. While at a City Council meeting, be mindful of electronic devices, such as smart phones, laptops and tablets. Do not use such devices to communicate with other Members, commissioners, Members of the public, or undertake ad hoc research while the City Council is considering a matter. Doing so results in parts of the decision-making process occurring outside of the public's view (and implies due process concerns for some City Council decisions).

Parliamentary Procedure. The City Council follows Rosenberg's Rules of Order. The purpose of the rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings. The Rules should be clear and user-friendly. 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. So, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process.

Also, the 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, the 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.

Closed Session

All City Council Meetings are open to the public. However, the City Council may hold "closed sessions", from which the public may be excluded. Topics that may be discussed are limited to the following: personnel matters, property negotiations, labor negotiations, existing litigation, anticipated litigation and any other topics allowed by law.

Closed Session attendees consist of the City Manager, City Attorney, City Council and any other person deemed necessary by the participants to further the discussion of the items for consideration. Each Closed Session participant must independently determine for themselves whether their participation in Closed Session is appropriate or lawful, and reliance upon the City Attorney's advice is insufficient justification.

Call to Order. The Mayor (or Vice-Mayor) calls the Closed Session to order at the appointed time. In the absence of both, the meeting shall be called to order by the City Manager and those Council Members present shall proceed to select a "temporary presiding officer".

Roll Call. Immediately after Call to Order, the City Clerk conducts a "roll call" of the Members present whose names that are recorded as "present" (i.e. in attendance.).

Public Comments. This time is reserved for the public to address the City Council on Closed Session items only. Comments must be made in person and are limited to 3 minutes. The City Clerk physically departs from the Closed Session at the conclusion of Public Comment.

Personnel Matters. The City Council may consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against such a person or employee. The Council may also review the performance of City Officials reporting directly to the City Council.

Property Negotiations. The City Council may discuss the terms and conditions under which real property may be acquired or sold but the actual purchase agreement or contract must be approved in an open session.

Labor Negotiations. The City Council may discuss the terms and conditions for meeting the City's obligations of negotiating in good faith with represented employees regarding wages, benefits, and working conditions.

Existing Litigation. The City Council may discuss existing legal matters to which the City is an actual party.

Anticipated Litigation. The City Council may discuss legal matters in which the City *could* become a party; however, this exception must be narrowly construed to apply only to matters with specific facts and circumstances.

Threats Against the City. The City Council may discuss threats to the security of public buildings, essential public services - including water, drinking water, wastewater treatment, natural gas service, and electric service - or a threat to the public's right of access to public services or facilities.

Confidentiality. Matters discussed in Closed Session shall not be discussed outside of the Closed Session by any City Council Member or City Official attending the meeting. Members who violate this policy are subject to sanctions by the City Council. Sanctions may include, but are not limited to, removal of the City Council Member from other boards and commissions where the Member represents the City. This policy ensures that the City Council conducts sensitive discussions appropriately while maintaining transparency and accountability to the public where required.

Open Session

Call to Order. The Mayor (or Vice-Mayor) calls the meeting to order at the appointed time. In the absence of both, the meeting shall be called to order by the City Manager and those City Council Members present shall proceed to select a "temporary presiding officer".

Pledge of Allegiance. The Mayor leads the Pledge of Allegiance.

Open Session Roll Call. Immediately after the Pledge, the City Clerk conducts a "roll call" of the Members present whose names are recorded as "present" (i.e. in attendance.)

Report on Closed Session/Confirmation of Reportable Action. The City Attorney announces any reportable action taken by City Council during Closed Session.

Proclamations. The City Council issues proclamations to recognize, honor and/or celebrate various community interests. The City Council generally takes a photo with recipients immediately after presenting the proclamation. A calendar of next year's Proclamations is adopted by the City Council at the end of each calendar year. Additional Proclamations may be scheduled as needed throughout the year.

Presentations. The City Council receives pertinent information from 3rd parties generally related to an area of interest.

Public Comments. City Council meetings are a *limited* public forum. Any person may address the City Council on any subject pertaining to City business, and which is not listed on the regular or closed session agendas. Generally, each person will be allowed up to three (3) minutes of time to address the City Council. One two-minute extension may be granted by the mayor at their discretion.

American Canyon promotes respectful and responsible behavior among its meeting participants, whether they are present in person or remotely. Using offensive language or remarks that promote, foster, or perpetuate discrimination based on race, creed, color, age, religion, gender marital status, status regarding public assistance, national origin, physical or mental disability or sexual orientation/gender identification, as well as any other category protected by federal, state or local laws will not be tolerated. In the case of offensive language or remarks and in the sole discretion of the Mayor, a speaker may be immediately disconnected from the microphone.

Agenda Review and Changes. The City Council may vote to modify the order of the agenda, to expedite the business of the City or to accommodate Members of the audience.

Consent Calendar. Items of a routine or non-controversial nature shall be placed on the Consent Calendar. A brief description of the item and/or the action to be taken shall be included to provide a better understanding of the issue. Item on the Consent Calendar are approved as a group, with single motion, second and vote. Typical items include:

- Prior meeting minutes.
- Monthly or informational reports.
- Routine purchases or awards of contracts of an item already budgeted.
- Actions approved in concept at a prior meeting.

Public Hearings. Generally, for legal purposes, certain items are heard as a public hearing, rather than as a Business Item. Public hearings will follow the noticing requirements as stipulated by applicable law. Public hearings are conducted in the following order:

1. Council Member *Ex Parte* disclosure
2. Staff review
3. Questions of staff by Council
4. Hearing opened by the mayor
5. Testimony from the applicant (if appropriate)
6. Testimony from the public
7. If desired, hearing closed.
8. Discussion by Council
9. Council action

Quasi-judicial hearings (such as when the Council is considering an appeal of a land use decision by the Planning Commission) shall be conducted in accordance with the principles of due process, and the City Attorney shall advise the City Council in this regard.

At any public hearing before the City Council, testimony of witnesses under oath may be requested by the City Council.

Business Items. Business Items are less formal than Public Hearings and will be introduced and summarized by the City staff. The appropriate departmental representative will be available to

answer questions that may be asked by Members or the public. Business items are conducted in the following order:

1. Staff review
2. Questions of Staff by Council
3. Testimony from the Applicant (if appropriate)
4. Public comment period is opened.
5. When finished, public comment period is closed.
6. Discussion by Council
7. Action by Council by roll call vote

Management and Staff Oral Reports. Informational reports by staff not requiring formal action.

Mayor/City Council Comments and Committee Reports. Members are encouraged to submit a written report to the City Clerk for inclusion in the meeting packet. Alternatively, an oral update can be provided at this time.

Future Agenda Items. Future agenda items are reviewed and considered. New "Council-requested" items are proposed by Member(s) through a motion and affirmative vote by the City Council majority. A log of future items will be maintained by the City Clerk and displayed on the agenda. The dates and prioritization of future agenda items is proposed by the City Manager subject to modification by direction of the City Council majority.

SECTION SIX: COMPENSATION

Salary. City Council Members receive a salary as stipulated by State law which may be adjusted from time to time by the Legislature. Effective with the City Council sworn in on December 3, 2024, Members will receive a salary of $950 per month.

Cost of Living Increase. Effective the first full pay period in December 2024, and then annually each January beginning in 2026 and thereafter, City Council Members will receive a cost-of-living increase equivalent to the California Consumer Price Index of the prior 12 months up to maximum of 10%, provided however this increase shall not exceed the amount of cost-of-living increase receive by City employees in the General Bargaining Unit. Any cost-of-living increase must be approved by the City Council.

Payment Schedule. City Council Members are paid twenty-six (26) times per year.

Additional Payment. City Council Members sit *defacto* as the American Canyon Fire Protection District Board of Directors (Fire District) and receive compensation separately and directly from the Fire District. Although Members will consider matters related to the former American Canyon County Water District ("Water District") from time to time, they will receive no additional compensation.

Retirement and Medical Benefit. City Council Members are covered under the City's PERS retirement program, which includes medical coverage. If a Member is vested in the City's retirement program, they will be eligible for retiree medical insurance benefits.

Dental and Vision. City Council Members are eligible for the same dental and vision care coverage and benefits as the Management Team.

Deferred Compensation and Equipment Loan Programs. City Council Members are eligible to participate in the City's Section 457 Deferred Compensation program and the City's Computer Equipment Loan program.

Vehicle Stipend. City Council Members are eligible to receive an auto stipend. The amount and terms of use shall be set by Resolution and may be amended from time to time.

Telephone Stipend. City Council Members are eligible to receive a phone stipend. The amount and terms of use shall be set by Resolution and may be amended from time to time.

No "Cash in Lieu" of Benefits. City Council Members are not eligible for "cash-in lieu of" any benefits they have declined.

SECTION SEVEN: ADMINISTRATIVE SUPPORT

General. The City Manager will ensure that routine matters, such as distributing City Council mail and providing clerical support, are handled as needed. Customized stationery will be provided for each City Council Member, recognizing that individual Members do not represent the full City Council. City resources, including funds, equipment (e.g., cell phone, laptop personal computer, small file storage), supplies (including letterhead), and staff time must only be used for authorized City of American Canyon activities and purposes. When in doubt, Members should contact the City Manager for advice before making any commitments.

Master Calendar. A calendar of events, functions, and meetings will be maintained and kept current by the City Clerk. This calendar will include functions, events, and regularly scheduled meetings attended by individual Council Members and will be distributed to the full City Council.

Request for Information. City Council Members may request information or research from the City Manager if the request can be completed in less than an hour. Often, the City Manager will delegate this request to staff. Requests anticipated to take more than one hour should be directed to the City Council during a City Council meeting under "Future Council Item." Requests for new information or policy direction will be brought to the full City Council at a Regular Meeting for consideration. All written reports will be copied to the full City Council.

Tickets to City Events. One ticket for each City Council Member will be provided for events hosted by the City or in which the City is a Member. Departments hosting City events will coordinate ticket distribution with the City Manager's Office. The availability of tickets for events hosted by other organizations will be at the discretion of the organizing agency. When the City is a major sponsor of an event, staff will endeavor to include ticket availability in the sponsorship agreement or contract.

City Council Notification of Significant Incidents. The City Manager's Office, in conjunction with the City's public safety departments, will coordinate notifications to the City Council in conjunction with the City Communication Policy. Notifications will occur in the event of a natural disaster, riots, large-scale evacuation, gang activity involving murder, injury and hospitalization of a city employee while on the job, an officer-involved shooting, or a financial issue that could result in controversy or disgrace for the City of American Canyon. This will be done via email and/or telephone.

Business Cards and Name Tags. Members will be issued business cards to be used in the duties and functions of the office. Name tags will be issued to wear during meetings, events, or at any function where Members are representing the City in their role as a City Council Member. At the conclusion of a term, name tags and unused business cards shall be returned to the City Clerk.

Travel and Training. City Council Members follow the same policies as staff for travel for official business or for training and educational purposes. Members are responsible for making their own

travel arrangements and accommodation and avoid unnecessary expenditures and negative public perception.

Technology. Each City Council Member is provided with a City-issued electronic tablet to facilitate their City Council work. The tablet is a valuable tool that will assist Members in staying connected and contribute to the success of their role, and the organization's goals. The tablet will be returned to the City Clerk upon the end of the Member's service on the City Council.

APPENDIX A CONFLICT OF INTEREST (FORM 700)

An Overview of Conflicts of Interest Under the Political Reform Act

May 2022

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I. The Basic Prohibition

Government Code Section 87100 of the Political Reform Act (the "Act")[1] prohibits a public official at any level of state or local government from making, participating in making, or attempting to use the official's position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. Government Code Section 87103 provides that an official has a "financial interest" within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the official's interests as identified and distinguishable from the decision's effect on the public generally.

Taken together, these provisions of the Act prohibit an official from taking part in a decision if it is reasonably foreseeable that the decision would have a material financial effect on one or more of the official's financial interests identified in Section 87103 distinguishable from the decision's effect on the public generally.

II. Making, Participating in Making, or Attempting to Influence a Decision

Regulation 18704 defines "making a decision," "participating in a decision," and "using official position to attempt to influence a decision" for purposes of the Act's conflict of interest provisions. If an official has a disqualifying conflict of interest under Section 87100, the official is prohibited from making, participating in making, or attempting in any way to use the official's official position to influence the decision.

A. General Definitions

Making a Decision: An official makes a decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the agency. (Regulation 18704(a).)

Participating in a Decision: An official participates in a decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review. (Regulation 18704(b).)

Using Official Position to Attempt to Influence a Decision: An official uses an official position to influence a decision if the official contacts or appears before: (1) any official in the official's agency, or in an agency subject to the authority or budgetary control of the official's 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 official purports to act within the official's authority or on behalf of the official's agency in making the contact. (Regulation 18704(c).)

B. Exceptions

Regulation 18704(d) provides that "making, participating in, or using official position to influence a decision" do not include any of the following:

Ministerial: Actions that are solely ministerial, secretarial, or clerical. (Regulation 18704(d)(1).)

Appearances as a Member of the General Public: An appearance by an official as a member of the general public before an agency in the course of its prescribed governmental function if the official is appearing on matters related solely to the official's personal interests, including interests in:

- Real property owned entirely by the official, members of the official's immediate family, or the official and members of the official's immediate family;
- A business owned entirely by the official, members of the official's immediate family, or the official and members of the official's immediate family; or
- A business over which the official, members of the official's immediate family, or the official and members of the official's immediate family solely or jointly exercise full direction and control. (Regulation 18704(d)(2).)

Terms of Employment: Actions by an official relating to the official's compensation or the terms or conditions of the official's employment or consulting contract. However, an official may not make a decision to appoint, hire, fire, promote, demote, or suspend without pay or take disciplinary action with financial sanction against the official or the official's immediate family, or set a salary for the official or the official's immediate family different from salaries paid to other employees of the agency in the same job classification or position. (Regulation 18704(d)(3).)

Public Speaking: Communications by an official to the general public or media. (Regulation 18704(d)(4).)

Academic Decisions: Teaching decisions, including an instructor's selection of books or other educational materials at the official's own school or institution, or other similar decisions incidental to teaching; or decisions by an official who has teaching or research responsibilities at an institution of higher education relating to the official's professional responsibilities, including applying for funds, allocating resources, and all decisions relating to the manner or methodology with which the official's academic study or research will be conducted. (Regulation 18704(d)(5).) However, this exception does not apply to an official who has institution-wide administrative responsibilities as to the approval or review of academic study or research at the institution unrelated to the official's own work. (*Ibid*.)

Architectural and Engineering Documents: Drawings or submissions of an architectural, engineering, or similar nature prepared by an official for a client to submit in a proceeding before the official's agency if: (i) the work is performed pursuant to the official's profession; and (ii) the official does not make any contact with the agency other

than contact with agency staff concerning the process or evaluation of the documents prepared by the official. (Regulation 18704(d)(6)(A).)

Also, an official's appearance before a design or architectural review committee or similar body of which the official is a member to present drawings or submissions of an architectural, engineering, or similar nature prepared for a client if: (i) the committee's sole function is to review architectural designs or engineering plans and to make recommendations to a planning commission or other agency; (ii) the committee is required by law to include architects, engineers, or persons in related professions, and the official was appointed to the body to fulfill this requirement; and (iii) the official is a sole practitioner. (Regulation 18704(d)(6)(B).)

Additional Consulting Services: Recommendations by a consultant regarding additional services for which the consultant or consultant's employer would receive additional income if the agency has already contracted with the consultant, for an agreed upon price, to make recommendations concerning services of the type offered by the consultant or the consultant's employer, and the consultant does not have any other economic interest, other than in the firm, that would be foreseeably and materially affected by the decision. (Regulation 18704(d)(7).)

III. Financial Interests

The first step in determining whether an official has a disqualifying conflict of interest under the Act is identifying the official's financial interests with respect to the decision at issue. Section 87103 identifies the following financial interests which may give rise to an official's disqualifying conflict of interest under the Act:

- A business entity in which the official has a direct or indirect investment worth $2,000 or more (Section 87103(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d)).
- Real property in which the official has an interest worth $2,000 or more. (Section 87103(b).)
- A source of income totaling $500 or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(c).)
- A giver of a gift or gifts totaling $500[2] or more in value provided or promised to, or received by, the official within the 12 months prior to the time when the decision is made. (Section 87103(e).)
- The official's personal finances and those of "immediate family," defined in Section 82029 as the spouse and dependent children. (Section 87103.)

IV. Foreseeability of Financial Effect

A. Explicitly Involved

A financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is explicitly involved in the decision. (Regulation (18701(a).) An official's financial interest is "explicitly involved" in a decision if the interest is a "named party in, or the subject of," the decision, and an interest is the "subject of a proceeding" if the decision involves the issuance, renewal, denial, or revocation of any license, permit, other entitlement to, or contract with, the interest.[3] Additionally, an official's real property interest is explicitly involved in any decision affecting the real property as described in Regulation 18702.2(a)(1) through (6), discussed further below. (*Ibid*.)

B. Not Explicitly Involved

When an official's financial interest is not explicitly involved in a decision, the financial effect of the decision is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. The effect need not be likely to be reasonably foreseeable. (Regulation 18701(b).)

Factors to be considered when determining if a decision's effect on an official's not explicitly involved interest is reasonably foreseeable include, but are not limited to, the following:

- The extent to which the occurrence of the effect is contingent upon intervening events (other than future governmental decisions by the official's agency or an agency subject to the budgetary control of the official's agency). (Regulation 18701(b)(1).)
- Whether the official should anticipate a financial effect on the financial interests at issue as a potential outcome under normal circumstances when using appropriate due diligence and care. (Regulation 18701(b)(2).)
- Whether the official has an interest of the type that would typically be affected by the terms of the decision. (Regulation 18701(b)(3).)
- Whether the decision is of the type that would be expected to have a financial effect on businesses and individuals similarly situated to those businesses and individuals in which the official has a financial interest. (*Ibid*.)
- Whether a reasonable inference can be made that the financial effects of the decision on the official's financial interest might compromise an official's ability to fulfill their duty to act in the best interests of the public. (Regulation 18701(b)(4).)
- Whether the decision will provide or deny an opportunity, or create an advantage for one of the official's financial interests. (Regulation 18701(b)(5).)

- Whether the official has the type of financial interest that would cause a similarly situated person to weigh the advantages and disadvantages of the decision on the official's financial interest in formulating a position. (Regulation 18701(b)(6).)

V. Materiality Standards

Regulation 18702(a) provides that the next step in the analysis is to determine if the decision's reasonably foreseeable financial effect on the official's financial interest is material. If the official's interest is in:

- A business entity, then apply the materiality standards of Regulation 18702.1. (Regulation 18702(a)(1).)
- A real property, then apply the materiality standards of Regulation 18702.2. (Regulation 18702(a)(2).)
- A source of income, then apply the materiality standards of Regulation 18702.3. (Regulation 18702(a)(3).)
- A source of a gift or gifts, then apply the materiality standards of 18702.4. (Regulation 18702(a)(4).)
- Their personal finances or those of immediate family, then apply materiality standard of 18702.5. (Regulation 18702(a)(5).)

A. Business Entity Interests

Regulation 18702.1 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a business in which an official has an interest, and provides that the effect is material if any of the following standards is met:

- The business is explicitly involved in the decision, meaning that the business is "a named party in, or the subject of, the decision, including any decision in which the business:
  - Initiates the proceeding by filing an application, claim, appeal, or other request for action concerning the business with the official's agency. (Regulation 18702.1(a)(1)(A).)
  - Offers to sell a product or service to the official's agency. (Regulation 18702.1(a)(1)(B).)
  - Bids on, or enters into, a contract with the official's agency, or is identified as a subcontractor on a bid or contract with the agency. (Regulation 18702.1(a)(1)(C).)
  - Is the named or intended manufacturer or vendor of any products to be purchased by the official's agency with an aggregate cost of $1,000 in any 12-month period. (Regulation 18702.1(a)(1)(D).)

- Applies for a permit, license, grant, tax credit, exception, variance, or other entitlement from the official's agency. (Regulation 18702.1(a)(1)(E).)
- Is the subject of any inspection, action, or proceeding under the regulatory authority of the official's agency. (Regulation 18702.1(a)(1)(F).)
- Is subject to an action taken by the official's agency that is directed at the entity. (Regulation 18702.1(a)(1)(G).)

- The decision may result in an increase or decrease of the business's annual gross revenues, or the value of its assets and liabilities, in an amount equal to or more than:
  - $1,000,000; or
  - Five percent of the business's annual gross revenues, and the increase or decrease is $10,000 or more. (Regulation 18702.1(a)(2).)
- The decision may cause the business to incur or avoid additional expenses or to reduce or eliminate expenses in amount equal to or more than:
  - $250,000; or
  - One percent of the business's annual gross revenues, and the increase or decrease is at least $2,500. (Regulation 18702.1(a)(3).)
- The official knows or has reason to know that business has an interest in real property and:
  - The property is a named party in, or the subject of, the decision under Regulations 18701(a) and 18702.2(a)(1) through (6); or
  - There is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.1(a)(4).)

Thus, if the decision's reasonably foreseeable financial effect on an official's business interest meets any of the four standards above, that effect is material, and the official is disqualified from taking part in the decision.

Small Shareholder Exception: Regulation 18702.1(b) sets forth the "Small Shareholder Exception," which provides that a decision's reasonably foreseeable financial effect on an official's financial interest in a business is not material under Regulation 18702.1(a)(1) or (a)(4)(A) if both:

- The official's only financial interest in the business is an "investment interest" under Section 87103(a) valued at $25,000 or less; and
- The official's interest in the business is less than one percent of the business's shares.

If the Small Shareholder Exception applies, the official is not disqualified.

B. Real Property Interests

Regulation 18702.2 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on real property in which an official has an interest as either an owner or lessee.

Explicitly Involved Real Property Interest: It is reasonably foreseeable a decision will have a material financial effect on an official's interest in real property any time the interest is explicitly involved in the decision. Therefore, the decision's reasonably foreseeable effect is material in any of the types of decisions described in Regulation 18702.2(a)(1) to (6), including a decision that:

- Involves the adoption of or amendment to a development plan or criteria applying to the property. (Regulation 18702.2(a)(1).)
- Determines the property's zoning or rezoning, other than a zoning decision applicable to all properties designated in that category; annexation or de-annexation; inclusion in or exclusion from any city, county, district, or local government subdivision or other boundaries, other than elective district boundaries. (Regulation 18702.2(a)(2).)
- Would impose, repeal, or modify any taxes, fees, or assessments that apply to the property. (Regulation 18702.2(a)(3).)
- Authorizes the sale, purchase, or lease of the property. (Regulation 18702.2(a)(4).)
- 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, the property. (Regulation 18702.2(a)(5).)
- Involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the property will receive new or improved services that provide a benefit or detriment disproportionate to other properties receiving the services. (Regulation 18702.2(a)(6).)

Not Explicitly Involved Real Property Interest: A decision's reasonably foreseeable financial effect on an official's interest in real property is material if it is of a type described in Regulation 18702.2(a)(7) through (8), (b) or (c), including a decision that:

- Involves property located 500 feet or less from the official's property unless there is clear and convincing evidence that the decision will not have any measurable impact on the official's property. (Regulation 18702.2(a)(7).)
- Involves property located more than 500 feet but less than 1,000 feet from the official's property, and the decision would change the official's property's: development potential; income producing potential; highest and best use; character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or market value (Regulation 18702.2(a)(8)(A) through (E).)

- Involves property located 1,000 feet or more from the property line of the official's property if there is clear and convincing evidence the decision would have a substantial effect on the official's property. (Regulation 18702.2(b).)
- Involves property leased by the official and the decision will:
  - Change the termination date of the lease;
  - Increase or decrease the potential rental value of the property;
  - Change the official's actual or legally allowable use of the property; or
  - Change the official's use and enjoyment of the property. (Regulation 18702.2(c)(1) through (4).)

Real Property Interest 1,000 Feet or More from Property Involved in Decision: As mentioned above, Regulation 18702.2(b) sets forth a presumption that the financial effect of a decision involving property located 1,000 feet or more from the property line of the official's property is not material. That presumption, however, may be rebutted with clear and convincing evidence the decision would have a substantial effect on the official's real property interest.

Exceptions for Planning Objectives or Policy: A decision's reasonably foreseeable financial effect on an official's real property interest is not material, and therefore the official is not disqualified from the decision, if the decision solely concerns:

- Repairs, replacement or maintenance of existing streets, water, sewer, storm drainage or similar facilities. (Regulation 18702.2(d)(1).)
- Adoption or amendment of a general plan, as defined in Regulation 18702.2(e)(2), if certain specified conditions are met. (See Regulation 18702.2(d)(2).)

Common Area Exception to the Definition of Interest in Real Property: Regulation 18702.2(e)(4) provides that an "interest in real property," as defined in Section 82033, does not include "any common area as part of the official's ownership interest in a common interest development as defined in the Davis-Stirling Common Interest Development Act (Civil Code Sections 4000 et seq.)"

C. Source of Income Interests

Regulation 18702.3 sets forth the materiality standards applicable to a decision's reasonably foreseeable financial effect on a source of income to an official, and provides that the effect is material if any of the following criteria is met:

- The source is explicitly involved in the decision because it is "a named party in, or the subject of, the decision," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.3(a)(1).)
- The source is an individual and any of the following applies:

- The decision may affect the individual's income, investments, or other assets or liabilities by $1,000 or more (excluding an interest in a business entity or real property). (Regulation 18702.3(a)(2)(A).)
- The official knows or has reason to know that the individual has an interest in a business entity that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1. (Regulation 18702.3(a)(2)(B).)
- The official knows or has reason to know that the individual: (i) has a real property interest and the property is explicitly involved in the decision; or (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(2)(C).)

- The source is a nonprofit organization and any of the following applies:
  - The decision may result in an increase or decrease of the organization's annual gross receipts, or the value of the organization's assets or liabilities, in an amount equal to or more than: (i) $1,000,000; or (ii) five percent of the organization's annual gross receipts and the increase or decrease is equal to or greater than $10,000. (Regulation 18702.3(a)(3)(A).)
  - The decision may cause the organization to incur or avoid additional expenses or to reduce or eliminate expenses in an amount equal to or more than: (i) $250,000; or (ii) one percent of the organization's annual gross receipts and the change in expenses is equal to or greater than $2,500. (Regulation 18702.3(a)(3)(B).)
  - The official knows or has reason to know that the organization has a real property interest and: (i) the property is explicitly involved in the decision; (ii) there is clear and convincing evidence the decision would have a substantial effect on the property. (Regulation 18702.3(a)(3)(C).)
- The source is a business that will be financially affected under the materiality standards applicable to a business set forth in Regulation 18702.1 (Regulation 18702.3(a)(4).)
- If there is a nexus between the decision and income received by the official or official's spouse. Otherwise referred to as the nexus test, any reasonably foreseeable financial effect on an official's source of income interest is material if the decision "will achieve, defeat, aid, or hinder a purpose or goal of the source and the official or the official's spouse receive or is promised the income for achieving the purpose or goal. (Regulation 18702.3(b).)

Exception for Retail Sales: Section 87103.5(a) provides that a retail customer of a business engaged in retail sales of good or services to the public generally is not a source of income to an official who owns a 10-percent or greater interest in the business if: the retail customers of the business constitute a significant segment of the public generally, and the amount of income received from an individual customer is not distinguishable from the amount of income received from its other customers.

Section 87103.5(b) sets forth a similar retail sales exception for a jurisdiction with a population of 10,000 or less that is located within a county with 350 or fewer retail businesses.

For purposes of applying Section 87103.5, Regulation 18702.3(c) provides that the retail customers of a business entity constitute a significant segment of the public generally if the business is open to the public and provides goods or services to customers that comprise a broad base of persons representative of the jurisdiction. (Regulation 18702.3(c)(1).)

Income from an individual customer is not distinguishable from the amount of income received from other customers when the official is unable to recognize a significant monetary difference between the business provided by the individual customer and the other customers of the business. (Regulation 18702.3(c)(2).) An official is unable to recognize a significant monetary difference when the business:

- Is of the type that sales to any one customer will not have a significant impact on the business's annual net sales; or
- Has no records that distinguish customers by amount of sales, and the official has no other information that the customer provides significantly more income to the business than an average customer. (*Ibid*.)

Income from a Government Entity: The materiality standards of Regulation 18702.3 do not apply where a government entity qualifies as a source of income as defined in Section 82030, including where an official is paid by the entity as a consultant or contractor. (Regulation 18702.3(d).) Under Regulation 18703(e)(7), an official with an interest in such an entity is disqualified from taking part in a decision only if there is a unique effect on the official. (*Ibid*.)

D. Source of Gift Interests

Regulation 18702.4 provides the materiality standards applicable to a decision's reasonably foreseeable financial effect on the source of a gift to an official, and provides that the decision's effect is material if:

- The source is explicitly involved in the decision because the source "is named or otherwise identified as the subject of the proceeding," including a claimant, applicant, respondent, or contracting party. (Regulation 18702.4(a).)
- The source is an individual that will be financially affected under the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances set forth in Regulation 18702.5 or the official knows or has reason to know that the individual has an interest in a business or real property that will be financially affected under the materiality standards provided in Regulation 18702.1 or 18702.2, respectively. (Regulation 18702.4(b))

- The source is a nonprofit organization that will receive a measurable financial benefit or loss as a result of the decision 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 materiality standards in Regulation 18702.2. (Regulation 18702.4(c).)
- The source is a business that will be financially affected under the materiality standards in Regulation 18702.1. (Regulation 18702.4(d).)

E. Interest in Personal Finances

Regulation 18702.5(a) provides the materiality standard applicable to a decision's reasonably foreseeable financial effect on an official's personal finances, including those of immediate family. Also known as the personal financial effect rule, a reasonably foreseeable effect on the official' personal finances is material if the decision may result in the official or the official's immediate family receiving a financial benefit or loss of $500 or more in any 12-month period due to the decision.

Exceptions: Under Regulation 18702.5(b), however, a decision's effect on an official's personal finances and those of immediate family is not material if the decision would:

- Affect only the salary, per diem, or reimbursement for expenses the official or their immediate family member receives from a federal, state, or local government agency, unless the decision is:
  - To appoint (except as specified), hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or their immediate family; or
  - To set a salary for the official or a member of their immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position, or when the member of the official's immediate family is the only person in the job classification or position. (Regulation 18702.5(b)(1).)
- Appoint the official to be a member of any group or body created by law or formed by the official's agency for a special purpose. However, if the official will receive a stipend for attending meeting of the group or body aggregating $500 or more in any 12-month period, the effect is material unless the appointing body posts all of the following on its website:
  - A list of each appointed position and its term. (Regulation 18702.5(b)(2)(A).)
  - The amount of the stipend for each appointed position. (Regulation 18702.5(b)(2)(B).)
  - The name of the official who has been appointed to the position. (Regulation 18702.5(b)(2)(C).)

- The name of any official who has been appointed to be an alternate for the position. (Regulation 18702.5(b)(2)(D).)

- Appoint the official to be an officer of the governing body of which the official is already a member (such as a decision to appoint a city councilmember to be the city's mayor.) (Regulation 18702.5(b)(3).)
- Establish or change the benefits or retirement plan of the official or the official's immediate family member, and the decision applies equally to all employees or retirees in the same bargaining unit or other representative group. (Regulation 18702.5(b)(4).)
- Result in the payment of any travel expenses incurred by the official or their immediate family while attending a meeting as an authorized representative of an agency. (Regulation 18702.5(b)(5).)
- Permit the official's use of any government property, including automobiles or other modes of transportation, mobile communication devices, or other agency-provided equipment for carrying out the official's duties, including any nominal, incidental, negligible, or inconsequential personal use while on duty. (Regulation 18702.5(b)(6).)
- Result in the official's receipt of any personal reward from their use of a personal charge card or participation in any other membership rewards program, so long as the reward is associated with the official's approved travel expenses and is no different from the reward offered to the public. (Regulation 18702.5(b)(7).)

Effect on Personal Finances and a Business or Real Property Interest: If a decision would have a reasonably foreseeable financial effect on a business or real property interest of an official, any related effect on the official's personal finances is not considered separately, and the effect is only analyzed under the respective materiality standards for business and real property interests, i.e. Regulations 18702.1 and 18702.2. (Regulation 18702.5(c).)

VI. The Public Generally Exception

Under Section 87103, if a decision's financial effect on an official's financial interest is indistinguishable from the decision's effect on the public generally, the official is not disqualified from taking part in the decision. Regulation 18703 sets forth the "Public Generally Exception."

The General Rule: A decision's financial effect on an official's financial interest is indistinguishable from its effect on the public generally if the official establishes that a "significant segment" of the public is affected and the "effect on the official's interest is not unique" compared to the effect on the significant segment. (Regulation 18703(a).)

A "significant segment" of the public is defined as:

- At least 25 percent of:
  - All businesses or nonprofit entities within the official's jurisdiction;
  - All real property, commercial real property, or residential real property within the official's jurisdiction; or
  - All individuals within the official's jurisdiction. (Regulation 18703(b)(1).)
- At least 15 percent of residential real property within the official's jurisdiction if the only interest the official has in the decision is the official's primary residence. (Regulation 18703(b)(2).)

A unique effect on an official's financial interest includes a disproportionate effect on:

- The development potential or use of the official's real property, or the income producing potential of the official's real property or business;
- An official's business or real property resulting from the proximity of a project that is the subject of a decision;
- An official's interests in business entities or real properties resulting from the cumulative effect of the official's multiple interests in similar entities or properties that is substantially greater than the effect on a single interest;
- An official's interest in a business or real property resulting from the official's substantially greater business volume or larger real property size when a decision affects all interests by the same or similar rate or percentage;
- A person's income, investments, assets or liabilities, or real property if the person is a source of income or gifts to the official; and
- An official's personal finances or those of immediate family. (Regulation 18703(c)(1)-(6).)

"Jurisdiction" means:

- The jurisdiction of the state or local government agency as defined in Section 82035;
- The designated geographical area the official was elected to represent; or
- The area to which the official's authority and duties are limited if not elected. (Regulation 18703(d).)

Specific Rules for Special Circumstances: Regulation 18703(e) also provides seven Specific Rules for Special Circumstances which govern the Public Generally Exception's applicability in those special circumstances. Under these rules, a decision's financial effect is deemed indistinguishable from its effect on the public generally if there is no unique effect on the official's interest and the official establishes:

- **Public Services and Utilities:** The decision sets or adjusts the amount of an assessment, tax, fee, or rate for water, utility, or other similar public services that is applied equally, proportionally, or by the same percentage to the official's interest and other businesses, properties, or individuals subject to the assessment, tax, fee, or rate. However, an official is not permitted to take part in a decision that would impose the assessment, tax, or fee, or determine the boundaries of a property or who is subject to the assessment, tax, or fee. An official is only permitted to take part in setting or adjusting the assessment, tax, or fee amount, once other related decisions have already been made. (Regulation 18703(e)(1).)

- **General Use or Licensing Fees:** The decision affects the official's personal finances as a result of an increase or decrease to a general fee or charge, such as parking rates, permits, license fees, application fees, or any general fee that applies to the entire jurisdiction. (Regulation 18703(e)(2).)

- **Limited Neighborhood Effects:** The decision affects residential real property limited to a specific location, encompassing more than 50, or five percent, of the residential real properties in the official's jurisdiction, and the decision establishes, amends, or eliminates ordinances that restrict on-street parking, impose traffic controls, deter vagrancy, reduce nuisance or improve public safety, provided the body making the decision gathers sufficient evidence to support the need for the action at a specific location. (Regulation 18703(e)(3).)

- **Rental Properties:** The decision is limited to establishing, eliminating, amending, or otherwise affecting the respective rights or liabilities of tenants and owners of residential rental property, including a decision regarding a rent control ordinance or tenant protection measures, provided all of the following criteria are met:

  - The decision applies to all residential rental properties within the official's jurisdiction other than those excepted by the Costa-Hawkins Rental Housing Act (Civil Code Sections 1954.50, et seq.). (Regulation 18703(e)(4)(A).)

  - The official owns three or fewer residential rental units. (Regulation 18703(e)(4)(B).)

  - Only interests resulting from the official's leasehold interest as a lessor of residential real property and the lessee or owner of the official's primary residence are affected by the decision. (Regulation 18703(e)(4)(C).)

- **Required Representative Interest:** The decision is made by a board or commission and the law that establishes the board or commission requires certain appointees have a representative interest in a particular industry, trade, or profession or other identified interest, and the public official is an appointed member representing that interest. This provision applies only if the effect is on the industry, trade, or profession or other identified interest represented. (Regulation 18703(e)(5).)

- **State of Emergency:** The decision is made pursuant to an official proclamation of a state of emergency when required to mitigate against the effects directly arising out of the emergency. (Regulation 18703(e)(6).)
- **Governmental Entities:** The decision affects a federal, state, or local government entity in which the official has an interest. (Regulation 18703(e)(7).)

VII. Legally Required Participation

Section 87101 provides that the prohibition of Section 87100 does not prevent an official from making or participating in the making of a decision to the extent the official's participation is legally required for the action or decision to be made. However, the existence of a tied vote does not make the disqualified official's participation legally required.

No Alternative Source of Decision: Regulation 18705(a) provides that an official who is financially interested in a decision may establish that the official is legally required to make or to participate in the making of a decision within the meaning of Section 87101 only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

"Quorum" Defined: Regulation 18705(d) provides that a "quorum" is the minimum number of members required to conduct business. When the vote of a supermajority is required to adopt an item, a "quorum" is the minimum number of members needed to adopt the item.

Narrowly Construed: Regulation 18705(c) requires the regulation be narrowly construed, and specifically provides that the regulation shall not to be construed:

- To permit an official who is otherwise disqualified under Section 87100 to vote to break a tie. (Regulation 18705(c)(1).)
- To allow a member of any agency who is otherwise disqualified under Section 87100 to vote if a quorum can be convened of other members of the agency who are not disqualified, whether or not those other members are actually present at the time of the disqualification. (Regulation 18705(c)(2).)

Random Means of Selection: Regulation 18705(c)(3) requires participation by the smallest number of officials with a conflict that are "legally required" for the decision to be made under Section 87101 and permits a "random means of selection" (e.g. drawing straws) to be used to select only the number of officials necessary to make the decision. When an official is selected, that official is selected for the duration of the proceedings in all related matters until their participation is no longer legally required, or the need for invoking the exception no longer exists. (Regulation 18705(c)(3).)

Public Identification of an Otherwise Disqualified Official's Financial Interests in a Decision: Regulation 18705(b) provides that when an official who has a financial interest in a decision is legally required to make or participate in making that decision, the official must state the existence of the potential conflict as follows:

- The official must disclose the existence of the conflict of interest and describe with particularity the nature of the official's disqualifying financial interest or interests. This requirement is satisfied if the official discloses:
  - The type of financial interest or interests involved in the decision, and;
  - Other specified information identifying the interest depending on the type of interest at issue.
- The official or another officer or employee of the agency must summarize the circumstances under which the conflict may arise.
- The official or another officer or employee of the agency must disclose the legal basis for the determination that there is no alternative source of decision.

Manner of Disclosure: The disclosures required by Regulation 18705(b) must be disclosed as follows:

- If the decision is made during an open session of a public meeting, the disclosures must be made orally before the decision is made;
- If the decision is made during a closed session of a public meeting, the disclosures must be made orally during open session either before the body goes into closed session or immediately thereafter;
- If the decision takes place outside of a public meeting, the disclosures must be made in writing; and
- In all three circumstances immediately above, the disclosures must be made part of the public record, as specified. (Regulation 18705(b)(4).)

VIII. Segmentation

Under the Act's conflict of interest provisions, each governmental decision must be analyzed independently to determine if the decision will have a disqualifying effect on an official's financial interest. (*In re Owen* (1976) 2 FPPC Ops. 77.) Accordingly, an agency may segment a decision in which an official has a disqualifying conflict of interest to allow the official to participate in associated decisions which would not have a disqualifying effect on the official's interests under Regulation 18706.

Required Conditions for Segmentation: Regulation 18706(a) provides that an agency may segment a decision in which an official is financially interested, to allow the official

to participate in associated decisions in which the official is not financially interested, provided all the following conditions are met:

- The decision in which the official is financially interested can be broken down into separate decisions that are not inextricably interrelated to the decision in which the official has a disqualifying financial interest;
- The decision in which the official is financially interested is segmented from the other decisions;
- The decision in which the official is financially interested is considered first and a final decision is reached by the agency without the disqualified official's participation in any way; and
- Once the decision in which the official is financially interested has been made, the official's participation in associated decisions does not result in a reopening of, or otherwise financially affect, the decision from which the official was disqualified.

"Inextricably Interrelated": Regulation 18706(b) provides that decisions are "inextricably interrelated" when the result of one decision will effectively determine, affirm, nullify, or alter the result of another decision.

Budget and General Plan Decisions Affecting Entire Jurisdiction: Regulation 18706(c) provides that once all separate decisions related to a budget or general plan affecting the entire jurisdiction have been finalized, the official may participate in the final vote to adopt or reject the agency's budget or general plan.

IX. Disqualification Requirements

Section 87105 governs the recusal of a public official specified in Section 87200 from a decision from which the official has been disqualified. Subdivisions (a)(1)-(3) of that section require the disqualified official to: identify the potential conflict of interest to publicly identify the official's financial interest or interests at issue; recuse from voting, discussing or attempting to influence the matter; and leave the room until after the matter is concluded. Subdivision (a)(4) excludes members of the Legislature from these recusal requirements.

Regulation 18707 provides further direction and guidance on the recusal requirements applicable to a public official specified in Section 87200 who is disqualified from a decision relating to an agenda item noticed for consideration at a public meeting subject to open meeting laws (i.e. the Bagley-Keene Act (Section 11120 et seq.) or the Brown Act (Section 54950 et seq.)).

Form and Content of Public Identification: The disqualified official must publicly identify each type of financial interest, identified in Section 87103, held by the official

that gives rise to the disqualifying conflict of interest. (Regulation 18707(a)(1).) The identification must be oral and part of the public record (Regulation 18707(a)(1)(B)), and provide the following information, as applicable:

- For a business interest: the name of the business, a general description of its activities, and any position held by the official. (Regulation 18707(a)(1)(A)(i).)
- For a real property interest: the property's address, assessor's number, or identification that the property is the official's personal residence. (Regulation 18707(a)(1)(A)(ii).)
- For a source of income interest: the name of the source of income. (Regulation 18707(a)(1)(A)(iii).)
- For a source of gift interest: the name of the source of gift. (Regulation 18707(a)(1)(A)(iv).)
- For all interests: the nature of the expense, liability, asset, or income affected. (Regulation 18707(a)(1)(A)(v).)

Timing: The public identification required by Regulation 18707(a)(1) must be made immediately prior to consideration of the agenda item. (Regulation 18707(a)(2).)

- Partial absence from a meeting does not excuse the disqualified official's public identification requirement. (*Ibid*.)
- If the official leaves a meeting in advance of an agenda item from which the official is disqualified, the official must provide the public identification required by Regulation 18707(a)(1) prior to leaving the meeting. (Regulation 18707(a)(2).)
- If the official first joins a meeting after consideration of the agenda item, the official must provide the public identification immediately upon joining the meeting. (*Ibid*.)

Recusal and Leaving the Room: The disqualified official must recuse, leave the room after the public identification required by Regulation 18707(a)(1), and refrain from participation in the decision. (Regulation 18707(a)(3).) The disqualified official does not count toward achieving a quorum while the item is discussed. (*Ibid*.)

- For an agenda item on a consent calendar (uncontested items), the official may remain in the room during the consent calendar. (Regulation 18707(a)(3)(A).)
- If the official has a "personal interest" in the agenda item, as defined in Regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, the official may leave the dais and speak or observe from the area reserved for members of the public after making the public identification required by Regulation 18707(a)(1) and recusing. (Regulation 18707(a)(3)(B).)

Special Rules for Closed Session: The public identification required by Regulation 18707(a)(1) must be made orally during the open session before the body goes into

closed session and may be limited to a declaration that the official's recusal is because of a conflict of interest under Section 87100. (Regulation 18707(a)(4).) The declaration must be made part of the official public record. (*Ibid*.) The official must not be present when the decision is considered in closed session or knowingly obtain or review a recording or any other non-public information regarding the decision. (*Ibid*.)

Other Decisions: For a decision other than an agenda item involving a public official specified in Section 87200 (governed by Regulation 18707(a)), Regulation 18707(b) provides the following:

- If the official determines not to act because of a financial interest, the official's determination may be accompanied by an oral or written disclosure of the interest.
- The official's presence will not be counted toward achieving a quorum.
- During a closed meeting of the agency, a disqualified official must not be present when the decision is considered, or knowingly obtain or review a recording or any other nonpublic information regarding the decision.
- An agency may adopt a local rule requiring the official to step down from the dais or leave the chambers.

Confidential Information: Regulation 18707(c) expressly provides that nothing in Regulation 18707 is intended to cause any disclosure that would reveal the confidences of a closed session or any other privileged information contemplated by law, including privileged information under Regulation 18740.

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission (the "Commission") are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] We note that the annual gift limit is adjusted biennially. The current gift limit is prescribed in Regulation 18940.2. The adjusted annual gift limit amount in effect for the period January 1, 2021, to December 31, 2022, is $520.

[3] For an official's interest in a business entity or real property, Regulation 18702.1(a) and Regulation 18702.2(a)(1)-(6), provide additional guidance for determining if the interest is explicitly involved.

Fair Political Practices Commission

Contribution Limits: City and County Candidates[1]

Introduction

Pursuant to Assembly Bill 571 (Stats. 2019, Ch. 556, AB 571 Mullin), beginning January 1, 2021 a state campaign contribution limit will by default apply to city and county candidates when the city or county has not already enacted a contribution limit on such candidates. Along with the new campaign contribution limit, there are also other related provisions that formerly applied only to state level candidates that will now apply to city and county candidates. Please note that none of the provisions of AB 571 discussed in this fact sheet apply to candidates in cities or counties for which the city or county has enacted campaign contribution limits.

Current State Contribution Limit

The contribution limit that will now apply to city and county candidates pursuant to AB 571 is updated biennially for inflation. Contribution limits can be found in Regulation 18545(a)[2] and on the FPPC website's FPPC Regulations page. The default limit for contributions to city and county candidates subject to AB 571 for 2023-2024 is set at $5,500 per election.

Other Provisions Affecting City and County Candidates

Several other provisions will now apply to city and county candidates in jurisdictions that have not enacted campaign contribution limits, including the following:

- A candidate may not make a contribution over the AB 571 limit to another candidate in jurisdictions subject to the AB 571 limit with limited exceptions related to recall elections, legal defense funds and candidate-controlled ballot measure committees. (See Regulation 18535 for more information.)

- A candidate that has qualified as a committee must establish a separate controlled committee and campaign bank account for each specific office. Candidates may not redesignate a committee for one election for another election.

- Candidates may transfer non-surplus campaign funds from one candidate-controlled committee to another committee controlled by the same candidate for a **different** office if the committee receiving the transfer is for an elective state, county or city office. However, contributions transferred must be attributed and transferred using the "last in, first out" or "first in, first out" accounting method and

shall not exceed the applicable contribution limit per contributor. If a candidate is seeking to transfer campaign funds from one controlled committee to another for the **same** office a candidate may carry over non-surplus campaign funds raised in connection with one election to pay for campaign expenditures incurred in connection with a subsequent election for the **same** office without attributing or using the "last in, first out" or "first in, first out" accounting method. (See Regulation 18536 for more information on the transfer and attribution of contributions and See Regulation 18537.1 for more information on carryover of contributions.)[1]

- Candidates may not personally loan to a candidate's campaign an amount for which the outstanding balance exceeds $100,000. "Campaign" includes both the primary and general, or special and special runoff, elections. However, a candidate may loan each committee for a different office or term of office up to $100,000. A candidate may not charge interest on any such loan the candidate made to the candidate's campaign. (See Regulation 18530.8 for more information.)

- Candidates may establish a committee to oppose the qualification of a recall measure and the recall election when the candidate receives a notice of intent to recall. Campaign funds raised to oppose the qualification of a recall measure and/or the recall election would not be subject to any campaign contribution limit under the Act. (See Regulation 18531.5 for more information.)

- A candidate for local office may open a candidate-controlled general purpose ballot measure committee to oppose or support a measure being voted on. The committee must identify on its campaign statements and reports each measure for which an expenditure of $100 or more is made. (See Regulations 18421.8 and 18521.5 for more information.)

- Contributions after the date of the election may be accepted to the extent contributions do not exceed net debts outstanding from the election, and contributions do not otherwise exceed applicable contribution limits for that election. (See Regulation 18531.64 for more information.)

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[1] This fact sheet is informational only and contains only highlights of selected provisions of the law. It does not carry the weight of the law. For further information, consult the Political Reform Act and its corresponding regulations, advice letters, and opinions.

[2] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.[1]

- Candidates are permitted to raise contributions for a general election before the primary election and may establish separate campaign contribution accounts for the primary and general so long as candidates set aside contributions and use them for the general or special general election as raised. If the candidate is defeated in the primary election or otherwise withdraws from the general election, the general election funds must be refunded to contributors on a pro rata basis less any expenses associated with the raising and administration of the general election contributions. (See Regulation 18531.2 for more information.)

- Candidates that are currently in office that are running for reelection to the same seat in an election after January 1, 2021 may carry over campaign funds without attribution as mentioned above. Candidates running for a different office also do not need to do LIFO FIFO or attribution for the election immediately subsequent to the election prior to 2021 for which the money was raised.

- Candidates must disclose cumulative totals of contributions received or made for each election on campaign statements. (See Regulation 18421.4 for more information.)

FAQs

A. If a city or county does not currently have contribution limits set within their ordinance would the state contribution limit be the default?

Yes. The state contribution limit stated above would be the default contribution limit if the city or county ordinance is silent on whether there are contribution limits within that jurisdiction or if there is no city or county ordinance in place.

B. Is there a way for a city or county to adopt "no" contribution limits for city or county elective city and county offices?

Yes. A city or county may elect to have "no" contribution limits. To do so, it must explicitly state in the city or county ordinance that there are no limits on contributions. If it is explicit that the city or county has implemented "no" contribution limits, the state contribution limit will not apply as a default for that jurisdiction.

C. Can a city or county ordinance be less restrictive than the AB 571 limit (e.g., the city or county limit is set higher than the state limit)?

Yes. A city or county can set contribution limits higher than the default state limit.

D. If a city or county imposes contribution limits, is the Commission responsible for enforcing those limits?

No. The Commission will not regulate the administration or enforcement of the penalties. Cities or counties with existing limits or that adopt their own limits are not subject to the state limit and may impose their own penalties for violations.

E. If a city or county has voluntary contribution limits, but no mandatory contribution limits will the state limit be applicable?

Yes. A city or county must enact mandatory contribution limits to avoid the state limit applying to elective city and county offices.

F. Does the default contribution limit also include judicial candidates?

No. Elective city and county offices do not include judicial offices.

G. If a city or county has imposed contribution limits for particular city or county offices (e.g., Board of Supervisors), do those limits also apply to other positions such as the District Attorney or would the default state limit apply if a particular position is not specifically addressed by the city or county?

The default state limit would apply to other positions for which the city or county has not set contribution limits. A city or county ordinance must explicitly state the city or county contribution limits and for which elective offices those limits will apply. A city or county may adopt a general provision implementing a contribution limit for all elective city and county offices in that jurisdiction. As noted above, a city or county may also adopt an ordinance that states the city or county is adopting no contribution limits for any offices to avoid the default state limit applying.

H. Does AB 571 apply to special district or school district elections?

No. AB 571 applies only to city and county elections for offices that a city or county has not implemented its own contribution limit.

I. Does AB 571 apply to the office of County Superintendent of Schools or the office of County Board of Education?

AB 571 does apply to the office of County Superintendent of Schools because it is considered a “county” office. However, the office of County Board of Education is not subject to AB 571 because it’s not considered a “county” position.

J. Can candidates that are subject to the AB 571 contribution limit open an officeholder committee?

No. Officeholder committees are not permitted for candidates subject to the AB

571 contribution limit. However, a candidate may use a committee for the officeholder's future election for officeholder expenses. A candidate may also use existing funds in the election committee for current office for officeholder expenses.

K. Does the AB 571 contribution limit apply to debt retirement for the 2020 election?

No. For purposes of retiring debt, the contribution limit is the one that was applicable to that election. The Act did not impose a contribution limit on city and county candidates in 2020.

L. If a contribution was received for an election occurring after January 1, 2021, PRIOR to January 1, 2021, does this contribution count towards the new AB 571 contribution limit after January 1, 2021?

No. The Commission adopted a formal opinion on April 15, 2021 that states contributions made prior to the effective date of AB 571 are not aggregated with contributions made on or after the effective date of AB 571 for purposes of the new contribution limit. Therefore, if someone contributed up to or above the current limit to an AB 571 committee prior to January 1, 2021 the same person can give additional contributions to the same committee up to the AB 571 contribution limit on or after January 1, 2021.

M. If a contributor gave $10,000 in 2020 (prior to the AB 571 limit going into effect) to a committee for a 2022 primary election, what happens?

The AB 571 contribution limit does not apply to contributions made prior to January 1, 2021 so a contribution of this amount is permissible.

N. Does the AB 571 contribution limit apply to political party committees and small contributor committees making contributions to candidates subject to the AB 571 limit?

Yes. Political parties and small contributor committees are only permitted to give contributions to candidates subject to the AB 571 in amounts up to the applicable AB 571 contribution limit for that candidate.

O. Does the AB 571 limit apply to county central committee candidates?

No. AB 571 imposes a contribution limit on city and county elective offices when a local jurisdiction has not already done so. Local jurisdictions are prohibited from placing contribution limits on county central committee candidates; therefore, AB 571 is not applicable to those offices.

P. If an election was held in November 2023, but resulted in the need for a run-off election to be held in February 2024, how would the contributions be treated under AB 571?

The run-off election is considered a new election. If a contributor gave any amount to an AB 571 candidate for the November 2023 election, the same contributor would still be permitted to contribute up to $5,500 (the AB 571 limit) to the same candidate for the February 2024 run-off election.

Q. An AB 571 candidate for city council would like to send out a request for contributions to their constituents. Do they need to include anything specific in the request?

Yes. A candidate that is subject to AB 571 must have the following information in the solicitation: the name of the controlled committee soliciting contributions, and the specific office for which those contributions will be used.

R. If an AB 571 candidate is the subject of a recall, is their committee to oppose the recall subject to contribution limits?

No. There are no contribution limits for a committee controlled by a candidate that is the subject of a recall that is formed to oppose the recall.

S. An AB 571 candidate has debts for an election held after January 1, 2021, may the candidate terminate their committee?

No. If a candidate-controlled committee has outstanding debts for an election held after January 1, 2021, they may not terminate without resolving or paying off the debt. When the committee has no net debts outstanding, the committee must be terminated within 24 months after the earliest of the date the candidate is defeated, leaves office, or the term of office for which the committee was formed ends, or, for withdrawn candidates no later than 24 months after the election from which the candidate withdrew. Please see Regulation 18404.1 for more on termination requirements for committees subject to AB 571.

T. If a local jurisdiction, which is subject to AB 571, passes a local campaign contribution ordinance, are the candidates still subject to AB 571?

No. They would no longer be subject to AB 571.

Index of Regulations and Government Codes:

FPPC Regulations:

18404.1
18421.4
18421.8
18521
18521.5
18523.1
18530.2
18530.8
18531.2
18531.5
18531.61
18531.63
18531.64
18535
18536
18537.1
18545
18951

Government Code(s):

85301
85303
85304.5
85305
85306
85307
85315
85316
85317
85318
85702.5

2023/2024 Form 700 Statement of Economic Interests

Reference Pamphlet

California Fair Political Practices Commission
1102 Q Street, Suite 3050 • Sacramento, CA 95811
Email advice: advice@fppc.ca.gov
Toll-free advice line: 1 (866) ASK-FPPC • (866) 275-3772
Telephone: (916) 322-5660 • Website: *www.fppc.ca.gov*

December 2023

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Who Must File

1. Officials and Candidates Specified in Gov. Code Section 87200 and Members of Boards and Commissions of Newly Created Agencies

The Act requires the following individuals to fully disclose their personal assets and income described in Form 700, Statement of Economic Interests:

State Offices
- Governor
- Lieutenant Governor
- Attorney General
- Controller
- Insurance Commissioner
- Secretary of State
- Treasurer
- Members of the State Legislature
- Superintendent of Public Instruction
- State Board of Equalization Members
- Public Utilities Commissioners
- State Energy Resources Conservation and Development Commissioners
- State Coastal Commissioners
- Fair Political Practices Commissioners
- State public officials (including employees and consultants) who manage public investments
- Elected members of and candidates for the Board of Administration of the California Public Employees' Retirement System
- Elected members of and candidates for the Teachers' Retirement Board
- Members of the High Speed Rail Authority

Other officials and employees of state boards, commissions, agencies, and departments file Form 700 as described in Part 2 on this page.

Judicial Offices
- Supreme, Appellate, and Superior Court Judges
- Court Commissioners
- Retired Judges, Pro-Tem Judges, and part-time Court Commissioners who serve or expect to serve 30 days or more in a calendar year

County and City Offices
- Members of Boards of Supervisors
- Mayors and Members of City Councils
- Chief Administrative Officers
- District Attorneys
- County Counsels
- City Attorneys
- City Managers
- Planning Commissioners
- County and City Treasurers
- County and city public officials (including employees and consultants) who manage public investments

Members of Newly Created Boards and Commissions
Generally, such a member must file an assuming office statement within 30 days as well as subsequent statements until the member's position is designated in a conflict of interest code. See Regulation 18754.

2. State and Local Officials, Employees, Candidates, and Consultants Designated in a Conflict of Interest Code ("Code Filers")

The Act requires every state and local government agency to adopt a unique conflict of interest code. The code lists each position within the agency filled by individuals who make or participate in making governmental decisions that could affect their personal economic interests.

The code requires individuals holding those positions to periodically file Form 700 disclosing certain personal economic interests as determined by the code's "disclosure categories." These individuals are called "designated employees" or "code filers."

Obtain your disclosure categories from your agency – they are not contained in the Form 700. Persons with broad decisionmaking authority must disclose more interests than those in positions with limited discretion. For example, you may be required to disclose only investments and business positions in or income (including loans, gifts, and travel payments) from businesses of the type that contract with your agency, or you may not be required to disclose real property interests.

In addition, certain consultants to public agencies may qualify as public officials because they make, participate in making, or act in a staff capacity for governmental decisions. Agencies determine who is a consultant and the level of disclosure and may use Form 805.

Note: An official who holds a position specified in Gov. Code Section 87200 is not required to file statements under the conflict of interest code of any agency that has the same or a smaller jurisdiction (for example, a state legislator who also sits on a state or local board or commission).

Employees in Newly Created Positions of Existing Agencies
An individual hired for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the agency's broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. The Form 804 may be used to satisfy this requirement.

Types of Form 700 Filings

Assuming Office Statement:

If you are a newly appointed official or are newly employed in a position designated, or that will be designated, in a state or local agency's conflict of interest code, your assuming office date is the date you were sworn in or otherwise authorized to serve in the position. If you are a newly elected official, your assuming office date is the date you were sworn in.

- Report: Investments, interests in real property, and business positions held on the date you assumed the office or position must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date you assumed the office or position.

For positions subject to confirmation by the State Senate or the Commission on Judicial Appointments, your assuming office date is the date you were appointed or nominated to the position.

- Example: Maria Lopez was nominated by the Governor to serve on a state agency board that is subject to state Senate confirmation. The assuming office date is the date Maria's nomination is submitted to the Senate. Maria must report investments, interests in real property, and business positions she holds on that date, and income (including loans, gifts, and travel payments) received during the 12 months prior to that date.

If your office or position has been added to a newly adopted or newly amended conflict of interest code, use the effective date of the code or amendment, whichever is applicable.

- Report: Investments, interests in real property, and business positions held on the effective date of the code or amendment must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the effective date of the code or amendment.

Annual Statement:

Generally, the period covered is January 1, 2023, through December 31, 2023. If the period covered by the statement is different than January 1, 2023, through December 31, 2023, (for example, you assumed office between October 1, 2022, and December 31, 2022 or you are combining statements), you must specify the period covered.

- Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement must be reported. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2023.
- If your disclosure category changes during a reporting period, disclose under the old category until the effective date of the conflict of interest code amendment and disclose under the new disclosure category through the end of the reporting period.

Leaving Office Statement:

Generally, the period covered is January 1, 2023, through the date you stopped performing the duties of your position. If the period covered differs from January 1, 2023, through the date you stopped performing the duties of your position (for example, you assumed office between October 1, 2022, and December 31, 2022, or you are combining statements), the period covered must be specified. The reporting period can cover parts of two calendar years.

- Report: Investments, interests in real property, business positions held, and income (including loans, gifts, and travel payments) received during the period covered by the statement. Do not change the preprinted dates on Schedules A-1, A-2, and B unless you are required to report the acquisition or disposition of an interest that did not occur in 2023.

Candidate Statement:

If you are filing a statement in connection with your candidacy for state or local office, investments, interests in real property, and business positions held on the date of filing your declaration of candidacy must be reported. In addition, income (including loans, gifts, and travel payments) received during the 12 months prior to the date of filing your declaration of candidacy is reportable. Do not change the preprinted dates on Schedules A-1, A-2, and B.

Candidates running for local elective offices (e.g., county sheriffs, city clerks, school board trustees, or water district board members) must file candidate statements, as required by the conflict of interest code for the elected position. The code may be obtained from the agency of the elected position.

Amendments:

If you discover errors or omissions on any statement, file an amendment as soon as possible. You are only required to amend the schedule that needs to be revised; it is not necessary to refile the entire form. The amended schedule(s) is attached to your original filed statement. Obtain amendment schedules from the FPPC website at *www.fppc.ca.gov.*

Where to File

1. Officials Specified in Gov. Code Section 87200 (See Reference Pamphlet, page 3):

In most cases, the filing officials listed below will retain a copy of your statement and forward the original to the FPPC.

Filers	Where to File
87200 Filers	
State offices	Your agency
Judicial offices	The clerk of your court
Retired Judges	Directly with FPPC
County offices	Your county filing official
City offices	Your city clerk
Multi-County offices	Your agency
87200 Candidates	
State offices Judicial offices Multi-County offices	County elections official with whom you file your declaration of candidacy
County offices	County elections official
City offices	City Clerk
Public Employees' Retirement System (CalPERS)	CalPERS
State Teachers' Retirement Board (CalSTRS)	CalSTRS

Note: Individuals that invest public funds for a city or county agency must file Form 700 with the agency. Unlike most other 87200 filers, the original statement will **not** be forwarded to the FPPC pursuant to Regulation 18753.

2. Code Filers — State and Local Officials, Employees, Candidates, and Consultants Designated in a Conflict of interest Code:

File with your agency, board, or commission unless otherwise specified in your agency's conflict of interest code. In most cases, the agency, board, or commission will retain the statements.

Candidates for local elective offices designated in a conflict of interest code file with the elections office where the declaration of candidacy or other nomination documents are filed.

3. Members of Newly Created Boards and Commissions:

File with your agency or with your agency's code reviewing body. See Regulation 18754.

State Senate and Assembly staff members file statements directly with the FPPC.

Exceptions:

- Elected state officers are not required to file statements under any agency's conflict of interest code.
- Filers listed in Section 87200 are not required to file statements under any agency's conflict of interest code in the same jurisdiction. For example, a county supervisor who is appointed to serve in an agency with jurisdiction in the same county has no additional filing obligations.

4. Positions Not Yet Covered Under a Conflict of interest Code

An individual hired for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. Agencies may use FPPC Form 804 for this disclosure. Such individuals are referred to as "code filers." See Regulation 18734.

When to File

Assuming Office Statements:

Filer	Deadline
Elected officials	**30 days** after assuming office
Appointed positions specified in Gov. Code Section 87200 **or** Members of newly created boards and commissions not covered by a conflict of interest code	**30 days** after assuming office **or** **10 days** after appointment or nomination if subject to Senate or judicial confirmation
Other appointed positions (including those held by newly-hired employees) that are or will be designated in a conflict of interest code	**30 days** after assuming office (30 days after appointment or nomination if subject to Senate confirmation)
Positions newly added to a new or amended conflict of interest code	**30 days** after the effective date of the code or code amendment

Exceptions:

- Elected state officers who assume office in December or January are not required to file an assuming office statement, but will file the next annual statement due.
- If you complete a term of office and, within 30 days, begin a new term of the same office (for example, you are reelected or reappointed), you are not required to file an assuming office statement. Instead, you will simply file the next annual statement due.
- If you leave an office specified in Gov. Code Section 87200 and, within 45 days, you assume another office or position specified in Section 87200 that has the same jurisdiction (for example, a city planning commissioner elected as mayor), you are not required to file an assuming office statement. Instead, you will simply file the next annual statement due.
- If you transfer from one designated position to another designated position within the same agency, contact your filing officer or the FPPC to determine your filing obligations.
- If a due date falls on a weekend or an official state holiday, the due date is the next regular business day.

Late statements are subject to a late fine of $10 per day per position up to $100 for each day the statement is late.

Annual Statements:

1. Elected state officers (including members of the state legislature, members elected to the Board of Administration of the California Public Employees' Retirement System and members elected to the Teachers' Retirement Board);
   Judges and court commissioners; and
   Members of state boards and commissions specified in Gov. Code Section 87200:
   File no later than **Friday, March 1, 2024.**
2. County and city officials specified in Gov. Code Section 87200:
   File no later than **Tuesday, April 2, 2024.**
3. Multi-County officials:
   File no later than **Tuesday, April 2, 2024.**
4. State and local officials and employees designated in a conflict of interest code:
   File on the date prescribed in the code (April 2 for most filers).

Exception:

If you assumed office between October 1, 2023, and December 31, 2023, and filed an assuming office statement, you are not required to file an annual statement until March 1, 2025, or April 1, 2025, whichever is applicable. The annual statement will cover the day you assumed office through December 31, 2024.

Incumbent officeholders who file candidate statements also must file annual statements by the specified deadlines.

When to File - (continued)

Leaving Office Statements:

Leaving office statements must be filed no later than 30 days after leaving the office or position.

Exceptions:

- If you complete a term of office and, within 30 days, begin a new term of the same office (for example, you are reelected or reappointed), you are not required to file a leaving office statement. Instead, you will simply file the next annual statement due.
- If you leave an office specified in Gov. Code Section 87200 and, within 45 days, you assume another office or position specified in Section 87200 that has the same jurisdiction (for example, a city planning commissioner elected as mayor), you are not required to file a leaving office statement. Instead, you will simply file the next annual statement due.
- If you transfer from one designated position to another designated position within the same agency, contact your filing officer or the FPPC to determine your filing obligations.

Candidate Statements:

All candidates (including incumbents) for offices specified in Gov. Code Section 87200 must file statements no later than the final filing date for their declaration of candidacy.

Candidates seeking a position designated in a conflict of interest code must file no later than the final filing date for the declaration of candidacy or other nomination documents.

Exception:

A candidate statement is not required if you filed an assuming office or annual statement for the same jurisdiction **within 60 days** before filing a declaration of candidacy or other nomination documents.

Late Statements:

Late statements should be submitted as soon as possible after the filing deadline, in the same manner and place as a timely filed statement.

The filing officer who retains originally-signed or electronically filed statements of economic interests may impose on an individual a fine for any statement that is filed late. The fine is $10 per day up to a maximum of $100. Late filing penalties may be reduced or waived under certain circumstances.

Persons who fail to timely file their Form 700 may be referred to the FPPC's Enforcement Division (and, in some cases, to the Attorney General or District Attorney) for investigation and possible prosecution. In addition to the late filing penalties from the filing officer, a fine of up to $5,000 per violation may be imposed.

Terms & Definitions

The instructions located on the back of each schedule describe the types of interests that must be reported. The purpose of this section is to explain other terms used in Form 700 that are not defined in the instructions to the schedules or elsewhere.

Blind Trust: See Trusts, Reference Pamphlet, page 16.

Business Entity: Any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, or association. This would include a business for which you take business deductions for tax purposes (for example, a small business operated in your home). When reporting a business entity on the Form 700, do not use acronyms for the name of entity, unless it is one that is commonly understood by the public.

Code Filer: An individual who has been designated in a state or local agency's conflict of interest code to file statements of economic interests.

An individual hired on or after January 1, 2023 for a position not yet covered under an agency's conflict of interest code must file Form 700 if the individual serves in a position that makes or participates in making governmental decisions. These individuals must file under the broadest disclosure category until the code is amended to include the new position unless the agency has provided in writing a limited disclosure requirement. Agencies may use FPPC Form 804 for such disclosure. See Regulation 18734.

Commission Income: "Commission income" means gross payments of $500 or more received during the period covered by the statement as a broker, agent, or salesperson, including insurance brokers or agents, real estate brokers or agents, travel agents or salespersons, stockbrokers, and retail or wholesale salespersons, among others.

In addition, you may be required to disclose the names of sources of commission income if your pro rata share of the gross income was $10,000 or more from a single source during the reporting period. If your spouse or registered domestic partner received commission income, you would disclose your community property share (50%) of that income (that is, the names of sources of $20,000 or more in gross commission income received by your spouse or registered domestic partner).

Report commission income as follows:

- If the income was received through a business entity in which you and your spouse or registered domestic partner had a 10% or greater ownership interest (or if you receive commission income on a regular basis as an independent contractor or agent), use Schedule A-2.
- If the income was received through a business entity in which you or your spouse or registered domestic partner did not receive commission income on a regular basis or you had a less than 10% ownership interest, use Schedule C.

The "source" of commission income generally includes all parties to a transaction, and each is attributed the full value of the commission.

Examples:

- You are a partner in Jameson and Mulligan Insurance Company and have a 50% ownership interest in the company. You sold two American Insurance Company policies to XYZ Company during the reporting period. You received commission income of $5,000 from the first transaction and $6,000 from the second. On Schedule A-2, report your partnership interest in and income received from Jameson and Mulligan Insurance Company in Parts 1 and 2. In Part 3, list both American Insurance Company and XYZ Company as sources of $10,000 or more in commission income.
- You are a stockbroker for Prince Investments, but you have no ownership interest in the firm. You receive commission income on a regular basis through the sale of stock to clients. Your total gross income from your employment with Prince Investments was over $100,000 during the reporting period. On Schedule A-2, report your name as the name of the business entity in Part 1 and the gross income you have received in Part 2. (Because you are an employee of Prince Investments, you do not need to complete the information in the box in Part 1 indicating the general description of business activity, fair market value, or nature of investment.) In Part 3, list Prince Investments and the names of any clients who were sources of $10,000 or more in commission income to you.
- You are a real estate agent and an independent contractor under Super Realty. On Schedule A-2, Part 1, in addition to your name or business name, complete the business entity description box. In Part 2, identify your gross income. In Part 3, for each transaction that resulted in commission income to you of $10,000 or more, you must identify the brokerage entity, each person you represented, and any person who received a finder's or other referral fee for referring a party to the transaction to the broker.

Note: If your pro rata share of commission income from a single source is $500 or more, you may be required to disqualify yourself from decisions affecting that source of income, even though you are not required to report the income. *(See Reference Pamphlet, page 12.)*

Terms & Definitions - (continued)

Conflict of Interest: A public official or employee has a conflict of interest under the Act when all of the following occur:

- The official makes, participates in making, or uses their official position to influence a governmental decision;
- It is reasonably foreseeable that the decision will affect the official's economic interest;
- The effect of the decision on the official's economic interest will be material; and
- The effect of the decision on the official's economic interest will be different than its effect on the public generally.

Conflict of Interest Code: The Act requires every state and local government agency to adopt a conflict of interest code. The code may be contained in a regulation, policy statement, or a city or county ordinance, resolution, or other document.

An agency's conflict of interest code must designate all officials and employees of, and consultants to, the agency who make or participate in making governmental decisions that could cause conflicts of interest. These individuals are required by the code to file statements of economic interests and to disqualify themselves when conflicts of interest occur.

The disclosure required under a conflict of interest code for a particular designated official or employee should include only the kinds of personal economic interests they could significantly affect through the exercise of their official duties. For example, an employee whose duties are limited to reviewing contracts for supplies, equipment, materials, or services provided to the agency should be required to report only those interests they hold that are likely to be affected by the agency's contracts for supplies, equipment, materials, or services.

Consultant: An individual who contracts with or whose employer contracts with state or local government agencies and who makes, participates in making, or acts in a staff capacity for making governmental decisions. The agency determines who is a consultant. Consultants may be required to file Form 700. Such consultants would file under full disclosure unless the agency provides in writing a limited disclosure requirement. Agencies may use FPPC Form 805 to assign such disclosure. The obligation to file Form 700 is always imposed on the individual who is providing services to the agency, not on the business or firm that employs the individual.

FPPC Regulation 18700.3 defines "consultant" as an individual who makes a governmental decision whether to:

- Approve a rate, rule, or regulation
- Adopt or enforce a law
- Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement
- Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval
- Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract
- Grant agency approval to a plan, design, report, study, or similar item
- Adopt, or grant agency approval of, policies, standards, or guidelines for the agency or for any of its subdivisions

A consultant also is an individual who serves in a staff capacity with the agency and:

- participates in making a governmental decision; or
- performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position specified in the agency's conflict of interest code.

Designated Employee: An official or employee of a state or local government agency whose position has been designated in the agency's conflict of interest code to file statements of economic interests or whose position has not yet been listed in the code but makes or participates in making governmental decisions. Individuals who contract with government agencies (consultants) may also be designated in a conflict of interest code.

A federal officer or employee serving in an official federal capacity on a state or local government agency is not a designated employee.

Digital Signature: Under the Act and Commission regulations, the Form 700s may be filed with a "digital signature," which may be used to sign documents electronically, if permitted by the filing officer. A digital signature is a type of certificate-based electronic signature that offers increased security to ensure the identity of the signer and prevent the alteration of documents after signing. For more information on how to use a digital signature, please refer to the Filing with a Digital Signature Fact Sheet on the FPPC's website.

For filing officers required to forward original statements filed via digital signature to the FPPC, the filing officer must verify the signature on the statement, and forward the statement via email to the FPPC at Form700@fppc.ca.gov. Do not mail the FPPC a copy of a Form 700 with a digital signature affixed.

Terms & Definitions - (continued)

Disclosure Categories: The section of an agency's conflict of interest code that specifies the types of personal economic interests officials and employees of the agency must disclose on their statements of economic interests. Disclosure categories are usually contained in an appendix or attachment to the conflict of interest code. Contact your agency to obtain a copy of your disclosure categories.

Diversified Mutual Fund: Diversified portfolios of stocks, bonds, or money market instruments that are managed by investment companies whose business is pooling the money of many individuals and investing it to seek a common investment goal. Mutual funds are managed by trained professionals who buy and sell securities. A typical mutual fund will own between 75 to 100 separate securities at any given time so they also provide instant diversification. *Only diversified mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 are exempt from disclosure.* In addition, Regulation 18237 provides an exception from reporting other funds that are similar to diversified mutual funds. (See Reference Pamphlet, page 13.)

Elected State Officer: Elected state officers include the Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, State Controller, Secretary of State, State Treasurer, Superintendent of Public Instruction, members of the State Legislature, members of the State Board of Equalization, elected members of the Board of Administration of the California Public Employees' Retirement System and members elected to the Teachers' Retirement Board.

Enforcement: The FPPC investigates suspected violations of the Act. Other law enforcement agencies (the Attorney General or district attorney) also may initiate investigations under certain circumstances. If violations are found, the Commission may initiate administrative enforcement proceedings that could result in fines of up to $5,000 per violation.

Instead of administrative prosecution, a civil action may be brought for negligent or intentional violations by the appropriate civil prosecutor (the Commission, Attorney General, or district attorney), or a private party residing within the jurisdiction. In civil actions, the measure of damages is up to the amount or value not properly reported.

Persons who violate the conflict of interest disclosure provisions of the Act also may be subject to agency discipline, including dismissal.

Finally, a knowing or willful violation of any provision of the Act is a misdemeanor. Persons convicted of a misdemeanor may be disqualified for four years from the date of the conviction from serving as a lobbyist or running for elective office, in addition to other penalties that may be imposed. The Act also provides for numerous civil penalties, including monetary penalties and damages, and injunctive relief from the courts.

Expanded Statement: In some circumstances, an official or an employee who holds multiple positions subject to filing obligations (for example, a city council member who also holds a designated position with a county agency, board, or commission) may complete one expanded statement for all those positions. The expanded statement must disclose all reportable interests for all jurisdictions and list all positions for which it is filed. The rules and processes governing the filing of an expanded statement are set forth in Regulation 18723.1.

Fair Market Value: When reporting the value of an investment, interest in real property, or gift, you must disclose the fair market value – the price at which the item would sell for on the open market. This is particularly important when valuing gifts, because the fair market value of a gift may be different from the amount it cost the donor to provide the gift. For example, the wholesale cost of a bouquet of flowers may be $10, but the fair market value may be $25 or more. In addition, there are special rules for valuing free tickets and passes. Call or email the FPPC for assistance.

Gift and Honoraria Prohibitions

Gifts:

State and local officials who are listed in Gov. Code Section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and officials and employees of state and local government agencies who are designated in a conflict of interest code were prohibited from accepting a gift or gifts totaling more than $590 in a calendar year from a single source in 2023-2024.

In addition, elected state officers, candidates for elective state offices, and officials and employees of state agencies are subject to a $10 per calendar month limit on gifts from lobbyists and lobbying firms registered with the Secretary of State.

Terms & Definitions - (continued)

Honoraria:

State and local officials who are listed in Gov. Code Section 87200 (except judges – see below), candidates for these elective offices (including judicial candidates), and employees of state and local government agencies who are designated in a conflict of interest code are prohibited from accepting honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

Exceptions:

- Some gifts are not reportable or subject to the gift and honoraria prohibitions, and other gifts may not be subject to the prohibitions, but are reportable. For detailed information, see the FPPC fact sheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans," which can be obtained from your filing officer or the FPPC website (*www.fppc.ca.gov).*
- The gift limit and the honorarium prohibitions do not apply to a part-time member of the governing board of a public institution of higher education, unless the member is also an elected official.
- If you are designated in a state or local government agency's conflict of interest code, the gift limit and honorarium prohibition are applicable only to sources you would otherwise be required to report on your statement of economic interests. However, this exception is not applicable if you also hold a position listed in Gov. Code Section 87200 (See Reference Pamphlet, page 3.)
- For state agency officials and employees, the $10 lobbyist/lobbying firm gift limit is applicable only to lobbyists and lobbying firms registered to lobby your agency. This exception is not applicable if you are an elected state officer or a member or employee of the State Legislature.
- Payments for articles published as part of the practice of a bona fide business, trade, or profession, such as teaching, are not considered honoraria. A payment for an "article published" that is customarily provided in connection with teaching includes text book royalties and payments for academic tenure review letters. An official is presumed to be engaged in the bona fide profession of teaching if they are employed to teach at an accredited university.

Judges:

Section 170.9 of the Code of Civil Procedure imposes gift limits on judges and prohibits judges from accepting any honorarium. Section 170.9 is enforced by the Commission on Judicial Performance. The FPPC has no authority to interpret or enforce the Code of Civil Procedure. Court commissioners are subject to the gift limit under the Political Reform Act.

Income Reporting: Reporting income under the Act is different than reporting income for tax purposes. The Act requires **gross** income (the amount received before deducting losses, expenses, or taxes, as well as income reinvested in a business entity) to be reported.

Pro Rata Share: The instructions for reporting income refer to your pro rata share of the income received. Your pro rata share is normally based on your ownership interest in the entity or property. For example, if you are a sole proprietor, you must disclose 100% of the gross income to the business entity on Schedule A-2. If you own 25% of a piece of rental property, you must report 25% of the gross rental income received. When reporting your community property interest in your spouse's or registered domestic partner's income, your pro rata share is 50% of their income. You must also report the name of your spouse's or registered domestic partner's employer as the source of income, not the name of spouse or registered domestic partner.

Separate Property Agreement: Generally, a public official is required to disclose their community property share of their spouse's income. But, when a public official and their spouse have a legally separate property agreement (e.g., prenuptial agreement), the official is not required to report the spouse's community property share of income, unless the funds are commingled with community funds or used to pay for community expenses or to produce or enhance the separate income of the official.

Note: This reporting exception does not apply to investments and interests in real property. Even if a public official and their spouse have a separate property agreement, the spouse's investments and interests in real property must still be disclosed because the definitions of reportable investments and interests in real property include those held by the official's immediate family (spouse, registered domestic partner, and dependent children). These definitions are not dependent on community property law.

Income to a Business Entity: When you are required to report sources of income to a business entity, sources of rental income, or sources of commission income, you are only required to disclose individual sources of income of $10,000 or more. However, you may be required to **disqualify** yourself from decisions affecting sources of $500 or more in income, even though you are not required to report them.

Examples:

- Alice Ruiz is a partner in a business entity. Alice has a 25% interest. On Schedule A-2, Alice must disclose 25% of the fair market value of the business entity; 25% of the gross income to the business entity (even though all of the income received was reinvested in

the business and Alice did not personally receive any income from the business); and the name of each source of $40,000 or more to the business.

- Pat and Mark Johnson, a married couple, own Classic Autos. Income to this business was $200,000. In determining the amount to report for income on Schedule A-2, Part 2, Mark must include Mark's 50% share ($100,000) and 50% of Mark's spouse's share ($50,000). Thus, Mark's reportable income would be $150,000 and Mark will check the box indicating $100,001-$1,000,000. (See Reference Pamphlet, page 13, for an example of how to calculate the value of this investment and interest in real property.)
- Renee Smith is an employee of a private company. Renee's employer offers the option of receiving a stipend in lieu of healthcare insurance provided by the employer. Since Renee Smith receives payments from their employer instead of healthcare insurance, Renee is required to report the gross income from the stipend payments. Renee would aggregate and report the total gross income received from both their stipend and salary on Schedule C.

You are <u>not</u> required to report:

- Salary, reimbursement for expenses or per diem, social security, disability, or other similar benefit payments received by you or your spouse or registered domestic partner from a federal, state, or local government agency
- A travel payment that was received from a nonprofit entity exempt from taxation under Internal Revenue Code Section 501(c)(3) for which you provided equal or greater consideration, such as reimbursement for travel on business for a 501(c)(3) organization for which you are a board member.
- Campaign contributions
- A cash bequest or cash inheritance
- Returns on a security registered with the Securities and Exchange Commission, including dividends, interest, or proceeds from a sale of stocks or bonds unless the purchaser can be identified.
- Redemption of a mutual fund
- Payments received under an insurance policy, such as life insurance policy payments, including an annuity
- Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union, an insurance policy, or a bond or other debt instrument issued by a government agency
- Your spouse's or registered domestic partner's income that is legally "separate" income so long as the funds are not commingled with community funds or used to pay community expenses
- Income of dependent children
- Automobile trade-in allowances from dealers
- Loans and loan repayments received from your spouse or registered domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin unless they were acting as an intermediary or agent for any person not covered by this provision
- Alimony or child support payments
- Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a)
- Any loan from a commercial lending institution made in the lender's regular course of business on terms available to the public without regard to your official status
- Any retail installment or credit card debts incurred in the creditor's regular course of business on terms available to the public without regard to your official status
- Loans made to others. However, repayments may be reportable on Schedule C
- A loan you co-signed for another person unless you made payments on the loan during the reporting period

Incentive Compensation: "Incentive compensation" means income over and above salary that is either ongoing or cumulative, or both, as sales or purchases of goods or services accumulate. Incentive compensation is calculated by a predetermined formula set by the official's employer which correlates to the conduct of the purchaser in direct response to the effort of the official.

Incentive compensation does not include:

- Salary
- Commission income *(For information regarding disclosure of "commission income," see Reference Pamphlet, page 8.)*
- Bonuses for activity not related to sales or marketing, the amount of which is based solely on merit or hours worked over and above a predetermined minimum
- Executive incentive plans based on company performance, provided that the formula for determining the amount of the executive's incentive income does not include a correlation between that amount and increased profits derived from increased business with specific and identifiable clients or customers of the company
- Payments for personal services which are not marketing or sales

The purchaser is a source of income to the official if all three of the following apply:

- the official's employment responsibilities include directing sales or marketing activity toward the purchaser; and
- there is direct personal contact between the official and the purchaser intended by the official to generate sales or business; and
- there is a direct relationship between the purchasing activity of the purchaser and the amount of the incentive compensation received by the official.

Report incentive compensation as follows:

- In addition to salary, reimbursement of expenses, and other income received from your employer, separately report on Schedule C the name of each person who purchased products or services sold, marketed or represented by you if you received incentive compensation of $500 or more attributable to the purchaser during the period covered by the statement.
- If incentive compensation is paid by your employer in a lump sum, without allocation of amounts to specific customers, you must determine the amount of incentive compensation attributable to each of your customers. This may be based on the volume of sales to those customers.

(See Regulations 18700.1 and 18728.5 for more information.)

Investment Funds: The term "investment" no longer includes certain exchange traded funds, closed-end funds, or funds held in an Internal Revenue Code qualified plan. These non-reportable investment funds (1) must be bona fide investment funds that pool money from more than 100 investors, (2) must hold securities of more than 15 issuers, and (3) cannot have a stated policy of concentrating their holdings in the same industry or business ("sector funds"). In addition, the filer may not influence or control the decision to purchase or sell the specific fund on behalf of their agency during the reporting period or influence or control the selection of any specific investment purchased or sold by the fund. (See Regulation 18237.)

Investments and Interests in Real Property: When disclosing investments on Schedules A-1 or A-2 and interests in real property on Schedules A-2 or B, you must include investments and interests in real property held by your spouse or registered domestic partner, and those held by your dependent children, as if you held them directly.

Examples:

- Julia Pearson, spouse, and two dependent children each own $600 in stock in General Motors. Because the total value of their holdings is $2,400, Julia must disclose the stock as an investment on Schedule A-1.
- Pat and Mark Johnson, a married couple, jointly own Classic Autos. Mark must disclose Classic Autos as an investment on Schedule A-2. To determine the reportable value of the investment, Mark will aggregate the value of each of their 50% interest. Thus, if the total value of the business entity is $150,000, Mark will check the box $100,001 - $1,000,000 in Part 1 of Schedule A-2. (Also see Reference Pamphlet, page 12, for an example of how to calculate reportable income.)

  The Johnsons also own the property where Classic Autos is located. To determine the reportable value of the real property, Mark will again aggregate the value of each of their 50% interest to determine the amount to report in Part 4 of Schedule A-2.
- Katie Lee rents out a room in their home. Katie receives $6,000 a year in rental income. Katie will report the fair market value of the rental portion of the residence and the income received on Schedule B.

Jurisdiction: Report disclosable investments and sources of income (including loans, gifts, and travel payments) that are either located in or doing business in your agency's jurisdiction, are planning to do business in your agency's jurisdiction, or have done business during the previous two years in your agency's jurisdiction, and interests in real property located in your agency's jurisdiction.

A business entity is doing business in your agency's jurisdiction if the entity has business contacts on a regular or substantial basis with a person who maintains a physical presence in your jurisdiction.

Business contacts include, but are not limited to, manufacturing, distributing, selling, purchasing, or providing services or goods. Business contacts do not include marketing via the Internet, telephone, television, radio, or printed media.

The same criteria are used to determine whether an individual, organization, or other entity is doing business in your jurisdiction.

Exception:

Gifts are reportable regardless of the location of the donor. For example, a state agency official with full disclosure must report gifts from sources located outside of California. (Designated employees/code filers should consult their disclosure categories to determine if the donor of a gift is of the type that must be disclosed.)

When reporting interests in real property, if your jurisdiction is the state, you must disclose real property located within the state of California unless your agency's conflict of interest code specifies otherwise.

Terms & Definitions - (continued)

For local agencies, an interest in real property is located in your jurisdiction if any part of the property is located in, or within two miles of, the region, city, county, district, or other geographical area in which the agency has jurisdiction, or if the property is located within two miles of any land owned or used by the agency.

See the following explanations to determine what your jurisdiction is:

State Offices and All Courts: Your jurisdiction is the state if you are an elected state officer, a state legislator, or a candidate for one of these offices. Judges, judicial candidates, and court commissioners also have statewide jurisdiction. (*In re Baty* (1979) 5 FPPC Ops. 10) If you are an official or employee of, or a consultant to, a state board, commission, or agency, or of any court or the State Legislature, your jurisdiction is the state.

County Offices: Your jurisdiction is the county if you are an elected county officer, a candidate for county office, or if you are an official or employee of, or a consultant to, a county agency or any agency with jurisdiction solely within a single county.

City Offices: Your jurisdiction is the city if you are an elected city officer, a candidate for city office, or you are an official or employee of, or a consultant to, a city agency or any agency with jurisdiction solely within a single city.

Multi-County Offices: If you are an elected officer, candidate, official or employee of, or a consultant to a multi-county agency, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. (Example: A water district has jurisdiction in a portion of two counties. Members of the board are only required to report interests located or doing business in that portion of each county in which the agency has jurisdiction.)

Other (for example, school districts, special districts and JPAs): If you are an elected officer, candidate, official or employee of, or a consultant to an agency not covered above, your jurisdiction is the region, district, or other geographical area in which the agency has jurisdiction. See the multi-county example above.

Leasehold Interest: The term "interest in real property" includes leasehold interests. An interest in a lease on real property is reportable if the value of the leasehold interest is $2,000 or more. The value of the interest is the total amount of rent owed by you during the reporting period or, for a candidate or assuming office statement, during the prior 12 months.

You are not required to disclose a leasehold interest with a value of less than $2,000 or a month-to-month tenancy.

Loan Reporting: Filers are not required to report loans from commercial lending institutions or any indebtedness created as part of retail installment or credit card transactions that are made in the lender's regular course of business, without regard to official status, on terms available to members of the public.

Loan Restrictions: State and local elected and appointed public officials are prohibited from receiving any personal loan totaling more than $250 from an official, employee, or consultant of their government agencies or any government agency over which the official or the official's agency has direction or control. In addition, loans of more than $250 from any person who has a contract with the official's agency or an agency under the official's control are prohibited unless the loan is from a commercial lending institution or part of a retail installment or credit card transaction made in the regular course of business on terms available to members of the public.

State and local elected officials are also prohibited from receiving any personal loan of $500 or more unless the loan agreement is in writing and clearly states the terms of the loan, including the parties to the loan agreement, the date, amount, and term of the loan, the date or dates when payments are due, the amount of the payments, and the interest rate on the loan.

Campaign loans and loans from family members are not subject to the $250 and $500 loan prohibitions.

A personal loan made to a public official that is not being repaid or is being repaid below certain amounts will become a gift to the official under certain circumstances. Contact the FPPC for further information, or see the FPPC fact sheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans," which can be obtained from your filing officer or the FPPC website *(www.fppc.ca.gov).*

Original Statement: A statement containing either a handwritten "wet" signature or a "secure electronic signature" signed under the penalty of perjury and verified by the filer pursuant to Gov. Code Section 81004. A "secure electronic signature" means either (1) a signature submitted using an approved electronic filing system or (2) if permitted by the filing officer, a digital signature submitted via the filer's agency email address. (See Regulations 18104 and 18757.)

Privileged Information: FPPC Regulation 18740 sets out specific procedures that must be followed in order to withhold the name of a source of income. Under this regulation, you are not required to disclose on Schedule A-2, Part 3, the name of a person who paid fees or made payments to a business entity if disclosure of the name would violate a legally recognized privilege under California

or Federal law. However, you must provide an explanation for nondisclosure, separately stating for each undisclosed person: the legal basis for the assertion of the privilege, facts demonstrating why the privilege is applicable, and that to the best of your knowledge you have not and will not make, participate in making, or use your official position to influence a governmental decision affecting the undisclosed person in violation of Government Code Section 87100. This explanation may be included with, or attached to, the public official's Form 700.

We note that the name of a source of income is privileged only to a limited extent under California law. For example, a name is protected by attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are not publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. A patient's name is protected by physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient. A patient's name is also protected if the disclosure of the patient's name would constitute a violation by an entity covered under the Federal Health Insurance Portability and Accountability Act (also known as HIPAA).

Public Officials Who Manage Public Investments: Individuals who invest public funds in revenue-producing programs must file Form 700. This includes individuals who direct or approve investment transactions, formulate or approve investment policies, and establish guidelines for asset allocations. FPPC Regulation 18700.3 defines "public officials who manage public investments" to include the following:

- Members of boards and commissions, including pension and retirement boards or commissions, and committees thereof, who exercise responsibility for the management of public investments;
- High-level officers and employees of public agencies who exercise primary responsibility for the management of public investments (for example, chief or principal investment officers or chief financial managers); and
- Individuals who, pursuant to a contract with a state or local government agency, perform the same or substantially all the same functions described above.

Registered Domestic Partners: Filers must report investments and interests in real property held by, and sources of income to, registered domestic partners. (See Regulation 18229.)

Retirement Accounts (for example, deferred compensation and individual retirement accounts (IRAs)): Assets held in retirement accounts must be disclosed if the assets are reportable items, such as common stock (investments) or real estate (interests in real property). For help in determining whether your investments and real property are reportable, see the instructions to Schedules A-1, A-2, and B.

If your retirement account holds reportable assets, disclose only the assets held in the account, not the account itself. You may have to contact your account manager to determine the assets contained in your account.

Schedule A-1: Report any business entity in which the value of your investment interest was $2,000 or more during the reporting period. (Use Schedule A-2 if you have a 10% or greater ownership interest in the business entity.)

Schedule B: Report any piece of real property in which the value of your interest was $2,000 or more during the reporting period.

Examples:

- Anaya Tiwari deposits $500 per month into the employer's deferred compensation program. Anaya has chosen to purchase shares in two diversified mutual funds registered with the Securities and Exchange Commission. Because Anaya's funds are invested solely in non-reportable mutual funds (see Schedule A-1 instructions), Anaya has no disclosure requirements with regard to the deferred compensation program.
- Earl James Jones has $6,000 in an individual retirement account with an investment firm. The account contains stock in several companies doing business in his jurisdiction. One of the stock holdings, Misac Computers, reached a value of $2,500 during the reporting period. The value of the investment in each of the other companies was less than $2,000. Earl must report Misac Computers as an investment on Schedule A-1 because the value of the stock in that company was $2,000 or more.
- Adriane Fisher has $5,000 in a retirement fund that invests in real property located in Adriane's jurisdiction. The value of Adriane's interest in each piece of real property held in the fund was less than $2,000 during the reporting period. Although this retirement fund holds reportable assets, there is no disclosure requirement because it did not have a $2,000 or greater interest in any single piece of real property. If, in the future, the value of Adriane's interest in a single piece of real property reaches or exceeds $2,000, it will be required to be disclosed on Schedule B for that reporting period.

Terms & Definitions - (continued)

Trusts: Investments and interests in real property held and income received by a trust (including a living trust) are reported on Schedule A-2 if you, your spouse or registered domestic partner, and your dependent children together had a 10% or greater interest in the trust and your pro rata share of a single investment or interest in real property was $2,000 or more.

You have an interest in a trust if you are a trustor and:

- Can revoke or terminate the trust;
- Have retained or reserved any rights to the income or principal of the trust or retained any reversionary or remainder interest; or
- Have retained any power of appointment, including the power to change the trustee or the beneficiaries.

Or you are a beneficiary and:

- Presently receive income (see Gov. Code Section 82030); or
- Have an irrevocable future right to receive income or principal. (See FPPC Regulation 18234 for more information.)

Examples:

- Sarah Murphy has set up a living trust that holds Sarah's principal residence, stock in several companies that do business in the jurisdiction, and a rental home in the agency's jurisdiction. Since Sarah is the trustor and can revoke or terminate the trust, Sarah must disclose any stock worth $2,000 or more and the rental home on Schedule A-2. Sarah's residence is not reportable because it is used exclusively as a personal residence.
- Chao Yee is listed as a beneficiary in a family's trust. However, Chao does not presently receive income from the trust, nor an irrevocable future right to receive income or principal. Therefore, Chao is not required to disclose any assets contained in the family trust.

Blind Trusts:

A blind trust is a trust managed by a disinterested trustee who has complete discretion to purchase and sell assets held by the trust. If you have a direct, indirect, or beneficial interest in a blind trust, you may not be required to disclose your pro rata share of the trust's assets or income. However, the trust must meet the standards set out in FPPC Regulation 18235, and you must disclose reportable assets originally transferred into the blind trust and income from those original assets on Schedule A-2 until they have been disposed of by the trustee.

Trustees:

If you are only a trustee, you do not have a reportable interest in the trust. However, you may be required to report the income you received from the trust for performing trustee services.

Wedding Gifts: Wedding gifts must be disclosed if they were received from a reportable source during the period covered by the statement. Gifts valued at $50 or more are reportable; however, a wedding gift is considered a gift to both spouses equally. Therefore, you would count one-half of the value of a wedding gift to determine if it is reportable and need only report individual gifts with a total value of $100 or more.

For example, you receive a place setting of china valued at $150 from a reportable source as a wedding gift. Because the value to you is $50 or more, you must report the gift on Schedule D, but may state its value as $75.

Wedding gifts are not subject to the $590 gift limit ($590 in 2023-2024), but they are subject to the $10 lobbyist/ lobbying firm gift limit for state officials.

Privacy Information Notice

Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Gov. Code Sections 81000-91014 and California Code of Regulations Sections 18110-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Notice or how to access your personal information, please contact the FPPC at:

General Counsel
Fair Political Practices Commission
1102 Q Street, Suite 3050
Sacramento, CA 95811
(916) 322-5660
(866) 275-3772

APPENDIX B - ETHICS (AB 1234)

AB 1234 Self-Study Materials

Part I: Financial Interests and Perks

AB 1234 requires elected and appointed officials to take *two hours* of ethics training if they receive compensation for their service or are reimbursed for their expenses.[1] The ethics training requirement may also apply to agency employees designated by the agency's legislative body.[2]

There are many ways to satisfy this requirement, including in-person training and self-study activities. Moreover, like all ethics laws, AB 1234 is a floor, not a ceiling. Local officials can demonstrate their commitment to ethics in public service by going beyond AB 1234's minimum requirements.

This self-study exercise is eligible for *one hour* of AB 1234 self-study credit (or half of the minimum requirement). To claim self-study credit, log on to www.ca-ilg.org/AB1234selfstudy, print out and take the test, mail it to the address indicated with the $37.50 processing fee. This fee covers grading the test, providing the correct answers (and explanations) and your proof of participation certificate.

Scope of This Self-Study Exercise

These materials cover the first two areas of ethics training required by AB 1234:

- Laws relating to personal financial gain by public officials (including bribery and conflict of interest laws); and
- Laws relating to office-holder perks, including gifts and travel restrictions, personal and political use of public resources and prohibitions against gifts of public funds.[3]

It also covers ethics principles related to these laws and ethics in public service in general.

Self-study materials that cover governmental transparency and fair process laws may be found here: www.ca-ilg.org/post/ab-1234-self-study.

Note that public service ethics laws are extraordinarily complex. The learning objective of both self-study and in-person AB 1234 training courses is to familiarize local officials with when they need to consult agency counsel, the Attorney General or the Fair Political Practices Commission about a given situation or course of action.

Moreover, the ethics laws and training requirements of AB 1234 are both *minimum* standards. Just because a course of action is legal doesn't mean that it is ethical or that the public or media will perceive it to be so. Local officials are strongly encouraged to go beyond the minimum standards set forth in the law and participate in additional educational activities relating to their legal and ethical obligations as public servants.

Financial Gain

Key Concepts

The principle underlying the financial gain laws is that the possibility of personal financial gain or loss cannot be a factor in your decisions as a public official. The laws in this area are designed to promote the general

ethical values of *responsibility* and *trustworthiness*. Public servants have a responsibility to act always in the public's interest, and the public needs to be able to trust that they will.

Key Laws

The following laws are designed to avoid both the reality and the appearance of personal financial gain influencing public servants' actions.

- **Bribery.** Requesting, receiving or agreeing to receive money in exchange for an official action is a crime. Under the state's criminal laws, a "bribe" includes anything of value; it also includes receiving "advantages." [4]The advantage can be a future one and need not involve the payment of money.[5]
- **Disqualification Based on Financial Interests.** A public official may not make, participate in or influence a governmental decision that will have a foreseeable and material financial effect on the official, the official's immediate family or any of the official's economic interests.[6] Note the breadth of the prohibition: it does not just apply to voting, but the entire process leading up to voting.
- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.[7] The law is very strict on this point. Such contracts are void—meaning that the public agency will not have to pay the official for the benefits provided to the agency under the contract.[8] Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract.
- **Helping Prospective Employers.** A public official may not influence agency decisions when the interests of a prospective employer are at stake.[9] This situation arises when someone is negotiating or has "any arrangement" concerning prospective employment with someone with business before the agency.
- **Revolving Door.** Elected officials and top-level managers cannot represent individuals or entities before their agencies for one-year after leaving office.[10]

Note that some local agencies have adopted even more restrictive prohibitions.

The "Leave the Room" Requirement

If you are disqualified from participating on a specific agenda item under the conflict of interest rules established by the Political Reform Act, you must:[11]

- At the meeting, publicly identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public.
- Not attempt to influence the decision in any way (this includes pre-meeting discussions with staff or colleagues).
- Refrain from discussing or voting on the matter (you should ask the item to be considered separately if it is on the consent calendar).
- Leave the room until after the discussion, vote and any other disposition of the matter, unless the matter is on the consent calendar.

There are limited exceptions that allow a disqualified official to remain in the room and participate in the discussion as a member of the public when one's "personal interests" are at stake. Consult with your agency attorney about what kinds of personal interests qualify.

Consequences of Missteps

The consequences of violating these requirements can be severe. They include criminal felony or misdemeanor prosecutions. Conviction can involve substantial fines, jail time and loss of office. Civil fines can also add up. For example, the administrative penalty for violation of the Political Reform Act is a fine of up to $5,000 per violation. In most instances, officials targeted for civil enforcement actions will pay tens of thousands of dollars in defense costs, significantly more in criminal cases.

There can also be other kinds of negative consequences. For example, if an official violates proscriptions against self-dealing relating to contracts, the official may have to refund amounts paid under the contract. If a decision is tainted by the participation of someone who should have disqualified him or herself, the decision is subject to invalidation.

Financial Interests Affected by an Agency Decision:

When to Seek an Attorney's Advice

Talk with your agency attorney when 1) an action by your public agency 2) may affect (positively or negatively 3) any of the following:

Income. Any source of income of $500 or more (including promised income) during the prior 12 months for you or spouse/domestic partner.

Real Property. A direct or indirect interest in real property of $2,000 or more that you or your immediate family (spouse/domestic partner and dependent children) have, including such interests as ownership, leaseholds (but not month-to-month tenancies) and options to purchase, especially when any of these are located within 500 feet of the subject of your decision.

Personal Finances. Your or your immediate family's (spouse/domestic partner and dependent children) personal expenses, income, assets, or liabilities.

Gift Giver. A giver of a gift of $520 (for 2021-22) or more to you in the prior 12 months, including promised gifts.

Lender/Guarantor. A source of a loan (including a loan guarantor) to you.

Contract. You or a member of your family would have an interest (direct or indirect) in a contract with the agency.

Business Management or Employment**.** An entity for which you serve as a director, officer, partner, trustee, employee, or manager.

Business Investment. An interest in a business in which you or your immediate family (spouse/domestic partner and dependent children) have a direct or indirect investment worth $2,000 or more.

Related Business Entity. An interest a business that is the parent, subsidiary or is otherwise related to a business if you:

- Have a direct or indirect investment worth $2,000 or more; or
- Are a director, officer, partner, trustee, employee, or manager.

Business Entity Owning Property. A direct or indirect ownership interest in a business entity or trust of yours that owns real property.

Campaign Contributor. A campaign contributor of yours (if you are sitting on an appointed decision-making body).

Other Personal Interests and Biases. You have important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties that could prevent you from making a fair decision.

What Will Happen Next? Agency counsel will advise you whether 1) you can participate in the decision and, 2) if a contract is involved, whether the agency can enter into the contract at all. Counsel may suggest asking either the Fair Political Practices Commission or the State Attorney General to weigh in. Keep in mind the attorney's duty is to promote compliance with the ethics laws, not try to find ways around them.

Personal Advantages and Perks

Key Concepts

The principle underlying the "no perks" laws is that one's status as a public servant and one's access to public resources should not afford special privileges. There are two categories of "no perk" laws. One relates to perks that others provide public officials (for example, gifts). The other involves advantages that officeholders provide themselves (for example, use of public resources).

The laws in this area are designed to promote the general ethical values of *fairness, responsibility* and *trustworthiness*. For example, receipt of perks from others undermines the public's trust that decision-makers are treating everyone who comes before them fairly and making decisions solely in the public's interests.

When officeholders give themselves perks, the public's trust that these officeholders are being careful and public-minded stewards of taxpayer resources is undermined. To the extent that some of these perks involve political advantages, they undermine the fairness of campaigns and elections.

Key Laws

Generally speaking, the "no perks" laws bar some transactions and require disclosure of others. The laws are complex and the following will help you "spot" the issue so you can consult agency counsel for further information about the rules in a given instance.

- **Loans.** Officials cannot receive loans from those within the agency[12] or with whom the agency contracts (except for bank or credit card indebtedness made in the regular course of the company's business).[13] Personal loans over $500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).[14]
- **Gifts.** With certain exceptions, a public official must disclose most gifts of $50 or more on his or her Statement of Economic Interests and may not receive gifts from any one source that totals over $520 in a single year (for 2021-22).[15] Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.[16]
- **Travel Expenses from Non-Transportation Companies.** Gifts of travel expenses (for example, airfare, lodging, meals and entertainment) from non-transportation companies are generally subject to the gift rules and must be reported on one's Statement of Economic Interests as such.
- **Travel Passes from Transportation Companies.** State law strictly forbids elected and appointed public officials from accepting free or discounted travel from transportation companies.[17] The penalty for violating the prohibition against accepting travel passes from transportation companies is severe--an immediate forfeiture of office.[18]
- **Receiving Gratuities or Rewards.** It is a crime to receive any kind of gratuity or reward for performing one's duties.[19]
- **Honoraria.** State law regulates the degree to which public officials may receive payments for giving a speech, writing an article or attending a public or private conference, convention, meeting, social event, meal or similar gathering.[20] Generally such payments—which are known as honoraria--are prohibited. The notion is such communications are part of a public official's service.

- **Personal Use of Public Resources.** State law forbids public officials from using public resources for personal purposes.[21] "Public resources" include such things as 1) staff time, 2) office equipment (telephones, fax machines, photocopiers, and computers), and 3) office supplies (stationery, stamps, and other items). "Personal" use of public resources includes activities that are for personal enjoyment, private gain or advantage.[22] For example, asking a staff member to pick up your laundry or kids from daycare would be a violation. "Use" means the use of public resources that is substantial enough to result in a gain or advantage for the user and a loss to the local agency that can be estimated as a monetary value.[23]
- **Expense Reimbursement.** The general rule is that local agency officials may only be reimbursed for actual and necessary expenses.[24] Cities, counties, and special districts that reimburse their elected and appointed officials must adopt expense reimbursement policies that specify the kinds of activities that will be reimbursable.[25] Local agencies must use expense report forms and all expenses must be documented with receipts.[26] These documents are public records subject to disclosure.[27]
- **Limits on Public Official Compensation.** Typically, there is a legal limit on elected public official compensation levels, either in state or local law public officials, particularly elected ones, may only collect and retain such compensation that the law allows.[28] As protectors of the public purse, courts generally take a strict approach to public official compensation limits.[29]

  City and county officials typically receive a monthly salary for their service. Special district directors tend to be compensated by a daily stipend. With certain exceptions, this stipend compensates such directors for:

  - A meeting of any "legislative body" as defined by the Brown Act
  - A meeting of an advisory body
  - Conference attendance or educational activities, including ethics training[30]

  Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.[31]
- **Use of Public Resources for Political Purposes.** The same statutes that prohibit the use of public resources for personal benefit also prohibit the use of such resources for campaign purposes.[32] The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures.
- **Mass Mailings at Public Expense. S**tate law forbids sending mass mailings [at] public expense.[33] State law defines "mass mailings" as including mailings that "feature an elected officer" by including their photograph or signature, or by singling out the officer by a manner in which their name appears in the document.[34]
- **Gifts of Public Resources or Funds.** California's constitution forbids gifts of public funds. This prohibits, for example, paying for spouses, partners or family members to accompany public officials.[35] It can also be an issue when a public agency contemplates charitable contributions.[36]

- **Soliciting Political Support from Agency Employees.** Soliciting campaign funds from agency officers or employees is also unlawful,[37] as is conditioning employment decisions on support of a person's candidacy.[38] Compensation decisions may not be tied to political support.[39]
- Speak with your agency counsel about the specifics of these requirements as they may apply to your situation.

Consequences of Missteps

The consequences of violating the "no-perk" laws can also be severe. For example, the prohibitions against the personal use of public resources are punishable by a $1,000 per day fine plus three times the value of the resource used.[40] Criminal penalties include a two to four year prison term and disqualification from office.[41] Prosecution under the federal income tax evasion laws is also a possibility.[42] Again, this does not include the costs of hiring defense lawyers, which can add up to tens of thousands of dollars, if not more.

Beyond the Minimum in Understanding Public Service Ethics

Like all ethics laws, AB 1234 sets minimum standards. The enforcement mechanism for complying with AB 1234's requirements relies on public scrutiny and media attention. Records of officials' compliance with AB 1234 (proof of participation certificates) are public records and must be maintained for at least five years.[43]

In addition to maintaining records on compliance with the minimum standards imposed by AB 1234, local agencies may also want to maintain records of any training and study local agency officials engaged in above and beyond AB 1234's minimum requirements. This will enable those inquiring to ascertain the agency's and individual's full scope of commitment to understanding the ethical and legal obligations associated with public service.

Beyond the Law

Understanding and complying with public service ethics laws is a challenge. But the public expects even more of its public servants. Rather than making decisions purely on the fly, how can public officials maximize the likelihood that they will meet or exceed the public's expectations for ethical conduct?

To be considered successful as a public servant, one is encouraged to think in terms of ethical values not minimum standards. Some key values relating to public service include responsibility, trustworthiness, respect and fairness. Assess decisions you have to make against these standards.

In addition, you can ask yourself these kinds of questions:

- What decision, behavior or course of action will best promote the public's trust in my leadership and that of my agency?

- Would I want to read about a certain course of action on the front page of my local newspaper?
- How do I want to be remembered as a public official? What would make my family and parents proud as a legacy?

For example, even if you are not legally required to disqualify yourself from participating in a decision, you may want to voluntarily abstain from participating if you believe the public could reasonably question whether you could put personal relationships and interests aside in making a given decision.

Conclusion

Former British Prime Minister Benjamin Disraeli once observed "...that all power is a trust; that we are accountable for its exercise." As extensive and complicated as they are, the above rules relating to public service ethics are a reflection of that overarching quest for accountability and trust.

For more information on these rules, go to www.ca-ilg.org/ethicslaws. For more information on ethics principles, please visit www.ca-ilg.org/ethicsprinciples.

Disclaimer: Open meeting practices continue to evolve as the COVID-19 crisis continues and agencies use a wide range of technology to meet their needs. The information provided in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. ILG urges you to consult with your own legal advisor before taking any action based on this information.

References

[1] Cal. Gov't Code § 53235(a), (b).

[2] Cal. Gov't Code § 53234(c).

[3] Cal. Gov't Code § 53235(a), (b).

[4] Cal. Penal Code § 7

[5] Id. *See also People v. Anderson*, 75 Cal. App. 365 (1925).

[6] *See* Cal. Gov't Code §§ 87100 and following.

[7] Cal. Gov't Code § 1090.

[8] Cal. Gov't Code § 1092. Thomson v. Call, 38 Cal. 3d 633, 646 (1985)

[9] Cal. Gov't Code § 87407.

[10] *See* Cal. Gov't Code §87406.3.

[11] *See* Cal. Gov't Code § 87105.

[12] *See* Cal. Gov't Code § 87460(a), (b).

[13] *See* Cal. Gov't Code § 87460(c), (d).

[14] *See* Cal. Gov't Code § 87461.

[15] Cal. Gov't Code §§ 87200, 87207, 89503; 2 Cal. Code Regs. § 18940.2 (The gift limit is modified every two years to reflect changes in the Consumer Price Index; the $520 (2021-22)

[16] Cal. Gov't Code § 82028(a).

[17] *See* Cal. Const. art. XII, § 7 ("A transportation company may not grant free passes or discounts to anyone holding an office in this State . . .").

[18] *See* Cal. Const. art. XII, § 7 (". . .acceptance of a pass or discount by a public officer . . . shall work a forfeiture of that office . . .").

[19] Cal. Penal Code § 70.

[20] *See* Cal. Gov't Code § 89501 (definition of honoraria).

[21] *See* Cal. Penal Code § 424; Cal. Gov't Code § 8314.

[22] Cal. Gov't Code § 8314(b)(1).

[23] Cal. Gov't Code § 8314(b)(4).

[24] Cal. Gov't Code § 36514.5.

[25] Cal. Gov't Code § 53232.2(b).

[26] Cal. Gov't Code § 53232.3.

[27] Cal. Gov't Code § 53232.3(e).

[28] For example, the salary of council members of general law cities is controlled by Government Code section 36516(a), which permits a city council to establish by ordinance a salary up to a ceiling determined by the city's population. The electorate may approve a higher salary. Cal. Gov't Code § 36516(b). A council member appointed or elected to fill a vacancy is compensated in the same amount as his or her predecessor. A directly-elected mayor may receive additional compensation with the consent of the electorate or by ordinance of the city council. Cal. Gov't Code § 36516.1. *See also* Cal. Educ. Code §§ 1090 (county board of education compensation), 35120 (school board member compensation), 72425 (community college board member compensation).

[29] *Id*.

[30] Cal. Gov't Code § 53232.1(a).

[31] Cal. Gov't Code § 53232.1(b).

[32] Cal. Penal Code § 424; *People v. Battin,* 77 Cal. App. 3d 635 (1978) (successful criminal prosecution of county supervisor for misusing public funds for improper political purposes), superseded on other grounds by *People v. Conner,* 34 Cal. 3d 141 (1983). *See also* Cal. Gov't Code § 8314 ("'Campaign activity' means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. 'Campaign activity' does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls and visitors to private political entities.").

[33] *See* Cal. Gov't Code § 89001.

[34] *See* Cal. Gov't Code 89002

[35] 75 Cal. Op. Att'y Gen. 20 (1992) (finding paying a spouse's expenses to a conference violates both Government Code section 1090 and constitutional prohibitions against gifts of public funds). *See also* 65 Cal. Op. Att'y Gen. 517, 521 (1982) (finding Government Code section 36514.5 does not authorize reimbursement of the expenses of any person other than a member of the city council). *See also Albright v. City of South San Francisco,* 44 Cal. App. 3d 866, 869-870 (1975). (unauthorized reimbursement is illegal gift).

[36] *See generally* McQuillin, *Municipal Corporations*, § 39.25 (3d rev. ed. 1988) ("Appropriations to charitable or nonprofit associations, without consideration [something in return], cannot be made.")

[37] *See* Cal. Gov't Code § 3205 (except for those communications to a significant segment of the public that happens to include fellow public officials and employees).

[38] *See* Cal. Gov't Code § 3204, which reads as follows: No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use, any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

[39] ??

[40] Cal. Gov't Code § 8314(c)(1).

[41] Cal. Penal Code § 424.

[42] *See* 26 U.S.C. §§ 7201, 7203.

[43] Cal. Gov't Code § 53235.2.

AB 1234 Self-Study Materials

Part II: Governmental Transparency and Fair Processes

AB 1234 requires elected and appointed officials to take two hours of ethics training if they receive compensation for their service or are reimbursed for their expenses.[1] The ethics training requirement may also apply to agency employees designated by the agency's legislative body.[2]

There are many ways to satisfy this requirement, including in-person training and self-study activities. Moreover, like all ethics laws, AB 1234 is a floor, not a ceiling. Local officials can demonstrate their commitment to ethics in public service by going beyond AB 1234's minimum requirements.

As a special service, the Institute for Local Government is offering this article for one hour of AB 1234 self-study credit (or half of the minimum requirement). To claim self-study credit, log on to www.ca-ilg.org/AB1234selfstudy, print out and take the test, mail it to the address indicated with the $37.50 processing fee. This fee covers grading the test, providing the correct answers (and explanations) and your proof of participation certificate; it also supports the Institute's work in the public service ethics area.

Scope of This Self-Study Exercise

This article covers half of the required areas of ethics, including:[3]

- Governmental transparency laws, including financial disclosure laws and laws protecting the public's right to participate in meetings and access public records (the Brown Act and Public Records Act); and
- Laws relating to fair processes, including common law bias, due process, incompatible offices, competitive bidding requirements for public contracts and disqualification from participation in decisions involving family members.

The self-study materials covering the other half of the areas of ethics training required by AB 1234 may be found here: www.ca-ilg.org/post/ab-1234-self-study.

Note that public service ethics laws are extraordinarily complex. The learning objective of both self-study and in-person AB 1234 training courses is to familiarize local officials with when they need to consult agency counsel, the attorney general or the Fair Political Practices Commission about a given situation or course of action.

Transparency Laws

The principle underlying governmental transparency laws is that the public trusts what it can observe. Transparency law is intended to promote participatory democracy, moreover, the prospect that actions will be publicly known can be a deterrent against actions that might undermine public trust. Thus, the laws in this area are designed to promote the general ethical values of trustworthiness and responsibility.

There are two basic categories of transparency laws. One relates to activities of the individual official. For example, these laws require specified officials to periodically disclose their personal financial interests (so the public can assess whether those interests played a role in the official's decisions). They also require officials to disclose campaign and charitable fundraising activities.

The other kind of transparency laws requires governmental processes to be transparent to the public. These laws require that governmental decisions be made in public and that the public have the opportunity to weigh in on those decisions. They also require that most public records be open to public inspection.

This self-study exercise discusses both kinds of transparency laws.

Financial Disclosure Laws

There is an adage about one's life being an open book. Nowhere is this truer than for public officials and their finances. The bottom line is that when you become a public official, the public gets to learn a great deal about your financial life. The voters created these disclosure requirements when they approved the Political Reform Act in 1974.[4]

The disclosure requirements apply to nearly every local elected official and department head. Members of commissions, boards, committees and other local agency bodies with significant decision-making authority are also subject to disclosure requirements. An agency may require additional staff positions to disclose their economic interests under the agency's local conflict of interest code. Such employees are known as "designated employees."

The following kinds of economic interests must be disclosed if they meet certain minimum thresholds:[5]

- Sources of income;
- Interests in real property;
- Investments;
- Business positions; and
- Gifts

This disclosure is made on forms called both "Statements of Economic Interests" and "Form 700s." Copies of these forms are generally provided by one's agency. Interactive versions of the forms are available from the Fair Political Practices Commission website: www.fppc.ca.gov.

These forms must be completed 1) upon assuming office 2) on an annual basis while in office and 3) upon leaving office.

Charitable Fundraising

The disclosure laws are not limited to an official's personal financial interests. There are extensive disclosure requirements relating to an official's campaign fundraising activities.[6] However, a sometimes-overlooked disclosure obligation relates to an official's charitable fundraising activities. The theory is that the public has a right to know who is contributing to an elected official's favorite charities and other causes.

The trigger occurs when an elected official gets someone to contribute $5,000 or more to a legislative, governmental or charitable cause during a calendar year, known as a behested payment.[7] Within 30 days of reaching the $5,000 threshold, the elected official must file a report with the official's agency (typically with the filing officer).

Conducting the Public's Business in Public

California's open meeting laws[8] provide legal minimums for local governmental transparency in decision-making. Decision-making bodies--which include the governing board as well as many committees and advisory bodies--must conduct their business in an open and public meeting to assure the public is fully informed about local decisions.[9]

The following are some key things to keep in mind:

- **Meetings.** A "meeting" is any situation involving a majority of the governing body in which business is transacted or discussed.[10] In other words, a majority of the governing body cannot talk privately about an issue before the body no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.[11]
- **Serial Meetings.** One thing to watch for is unintentionally creating a "serial" meeting—a series of communications that result in a majority of governing body members having conferred on an issue. For example, if two members of a five-member governing body consult outside of a public meeting (which is not in and of itself a violation) and then one of those individuals consults with a third member on the same issue, a majority of the body has consulted on the same issue. Note the communication does not need to be in person and can occur through a third party. For example, sending or forwarding e-mail can be sufficient to create a serial meeting, as can a staff member polling governing body members in a way that reveals the members' positions to one another.[12]
- **Permissible Gatherings.** Not every gathering of governing body members is a problem. For example, a majority of the governing body may attend the same educational conference or a community meeting not organized by the local agency.[13] Nor is attendance at a social or ceremonial event in and of itself a violation.[14] The key rule to keep in mind is a majority of the governing body members cannot meet and discuss agency business except at an open and fully noticed public meeting.
- **Closed Sessions.** The open meeting laws include provisions for closed discussions under very limited circumstances.[15] Because of the complexity of the open meeting laws, close consultation with an agency's legal advisor is necessary to ensure that the requirements relating to and the limitations on closed sessions are observed.

The Public's Right to Participate in Meetings

Another element of open meeting laws is the public's right to address the governing body. A public official's role is to both hear and evaluate these concerns. There are a number of basic rules that govern this right.

- **Posting and Following the Agenda.** The open meeting laws require that the public be informed of the time of and location and the issues to be addressed at each meeting.[16]
- **Agenda Descriptions.** Each agenda item shall provide a description of the item sufficient enough to inform the community as to whether they should want to participate and/or be heard on the item.
- **The Public's Right to be Heard.** Generally, every agenda must provide an opportunity for the public to address the governing body on any item of interest to the public within the body's jurisdiction.[17] If the

issue of concern is one pending before the legislative body, the opportunity must be provided before or during the body's consideration of that issue.[18]

- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure everyone has an opportunity to be heard in an orderly manner.[19]

The Public's Right to Access Records

Copies of the agenda materials and other documents distributed to the governing body must also be available to the public.[20] The public has the right to see any materials that are created as part of the conduct of the people's business.[21] These materials include any writing that was prepared, owned, used or retained by a public agency.[22] They include documents, computer data, e-mails, facsimiles and photographs.[23] The public may even have a right to access records such as texts and email messages on private devices and accounts used by a public official.[24]

Although there are exceptions to a public agency's duty to disclose records, the safe assumption is virtually all materials involved in one's service on the governing body--including e-mails--are public records subject to disclosure.

Fair Process Laws

Not surprisingly, fair process laws promote the ethical value of fairness. This is the notion that everyone has a right to be treated fairly by governmental processes, irrespective of who they are or whom they know. The public's perception that decisions are made fairly is a key element of the public's confidence and trust in government and individual public officials.

The Obligation to be a Fair and Unbiased Decision-Maker

Although California statutes largely determine when public officials must disqualify themselves from participating in decisions, common law (judge-made) and some constitutional principles still require a public official to exercise his or her powers free from personal bias-including biases that have nothing to do with financial gain or losses.

In addition, constitutional due process principles require a decision-maker to be fair and impartial when the decision-making body is sitting in what is known as a "quasi-judicial" capacity. Quasi-judicial matters include variances, use permits, annexation protests, personnel disciplinary actions and licenses. Quasi-judicial proceedings tend to involve the application of generally adopted standards to specific situations, much as a judge applies the law to a particular set of facts.

For example, a court overturned a planning commission's decision on due process grounds, concluding that a planning commissioner's authorship of an article hostile to a project before the commission gave rise to an unacceptable probability of bias against the project, and that the commissioner should have disqualified himself from participating in the decision.[25]

Typically, having the official who may have exhibited bias disqualify himself or herself solves the problem.[26] If the problem is not addressed though, the agency's decision will be at risk of being overturned by the courts.[27] The agency will have to conduct new proceedings free of the influence of the biased decision-maker.[28] If the

violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorney fees.[29]

Finally, community relations—and the public's views of an official's responsiveness—are seriously undermined when it appears an official is not listening to the input being provided by the public. Even if you disagree with the views being offered, treat the speaker with the same respect you would like to be treated with if the roles were reversed. Moreover, at least one court has ruled that officials' perceived inattentiveness during a hearing violated due process principles.[30]

Campaign Contributions and Bias

Generally, the ethics laws with respect to campaign contributions emphasize disclosure rather than disqualification. The emphasis on disclosure enables the public to assess for itself the degree an official could be influenced by campaign contributors who appear before the agency. Both financial and in-kind support must be disclosed.

However, under limited (and sometimes counterintuitive) circumstances, certain local agency officials must disqualify themselves from participating in proceedings regarding licenses, permits and other entitlements for use if the official has received campaign contributions of more than $250 during the previous twelve months from any party or participant.[31] The restrictions apply if the official is sitting on an appointed (as opposed to elected) body.[32]

In addition, these officials are prohibited from receiving, soliciting or directing a campaign contribution of more than $250 from any party or participant in a license, permit or entitlement proceeding while the proceeding is pending and for three months after the contribution.[33]

Holding Multiple Public Offices

There is such a thing as too much public service; the law limits the degree to which public officials can hold multiple public offices. The reason is that, when one assumes a public office, one takes on responsibility to the constituents of that agency to put their interests first. When one occupies multiple offices in multiple agencies (for example, membership on the city council and serving on the board of another local agency), that job becomes more complicated, both legally and ethically, because of the possibility of conflicting loyalties.[34]

Offices are incompatible if there is a potential for any significant clash of duties or loyalties between the offices, or either officer exercises a supervisory, auditory or removal power over the other. The prohibition against the simultaneous holding of incompatible offices does not require the existence of an actual conflict between the offices. A potential for a significant clash between the two offices is sufficient to trigger the prohibition.[35] Note there can be specific legislative exceptions to incompatible office rules.

Competitive Bidding Processes for Public Contracts

Public contracting laws—including those adopted at the local level—are designed to give all interested parties the opportunity to do business with the government on an equal basis. This keeps contracts from being steered to businesses or individuals because of political connections, friendship, favoritism, corruption or other factors.

It also assures that the public receives the best value for its money by promoting competition among businesses so the public can receive the best deal.[36]

Many competitive bidding requirements are locally imposed, for example, by charter cities as part of their municipal affairs authority.[37] State law also authorizes local agencies to adopt procedures for acquisition of supplies and equipment.[38] Most of these purchasing ordinances require competitive bids for contracts in excess of designated dollar amounts.

For public works projects, state law defines when general law cities and counties must use competitive bidding. For general law cities, public works projects over $5,000 are subject to the state's competitive bidding requirements.[39] For county projects, the threshold is based on population: $6,500 (counties with populations of 500,000 or over), $50,000 (counties with populations of 2 million or over) and $4,000 (all other counties).[40] Note that it is a misdemeanor to split projects to avoid competitive bidding requirements.[41]

In order to give all interested parties an opportunity to do business with the agency and get the best price for the public, the agency has to publicize the opportunity. This is typically accomplished by publishing a notice inviting bids in a newspaper of general circulation that is printed or published in the jurisdiction, or if there is none, posting the notice in at least three public places in the jurisdiction.[42] Trade publications can also be a helpful way to reach a wide segment of the contracting industry.

Decisions Involving Family Members

The Political Reform Act requires public officials to disqualify themselves from participating in decisions that will increase or decrease their immediate family's expenses, income, assets or liabilities.[43] "Immediate family" includes one's spouse or domestic partner and dependent children.[44] The notion is that it is very difficult for any person to be fair and unbiased when one's family's interests are concerned; it is, of course, also difficult for the public to perceive the official to be fair and unbiased about close family members.

Because of this, some jurisdictions have adopted additional restrictions on the hiring or appointing of relatives of public officials. These are known as anti-nepotism policies. It can be wise to avoid questions about family relationship by voluntarily not participating in decisions that affect family members, even if the law or local agency regulations allow you to participate.

Beyond the Law

At some point in your service as a public official, you will likely face two common types of ethical dilemmas:

- **Personal Cost Ethical Dilemmas.** This involves situations in which doing the right thing may or will come at a significant personal cost to you or your public agency. These also can be known as "moral courage" ethical dilemmas.[45]
- **Right-versus-Right Ethical Dilemmas.** This type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values.[46]

Of course, some dilemmas are a combination of both: a conflict between competing sets of "right" values (right-versus-right) and a situation in which doing the right thing involves personal or political costs.

Personal Cost Ethical Dilemmas

With these kinds of dilemmas, the costs can be political - such as the loss of political support or perhaps even one's prospects for reelection. Or, the cost can be financial, for example a missed opportunity for financial gain or material benefits. Issues relating to the proper use of public resources fall into the "personal cost" type of ethical dilemma, in as much as these dilemmas typically involve whether one is going to forgo a tempting political or personal benefit. Finally, the cost can be more directly personal, as when one fears a particular course of action may jeopardize a friendship. In these situations, the answer is relatively simple. *The bottom line is that being ethical means doing the right thing regardless of personal costs.*

Right-versus-Right Ethical Dilemmas

Right-versus-right ethical dilemmas can be more difficult to resolve. An easy example, however, is when a political supporter urges you to do something that conflicts with your own best sense of what will serve your community's interests. In this dilemma, there is a conflict between your *responsibility* to do what is in the public's best interest and your *loyalty* to your political supporter. Responsibility and loyalty are both bona fide ethical values.

The key is, as a public servant, the ethical value of responsibility (and the responsibility to do what is in the public's best interest) trumps the ethical value of loyalty. This is when thinking about the public's perception of the right thing to do can be a useful dilemma-resolution strategy.

Conclusion

In politics, there is a great temptation to engage in ends/means thinking in which one is tempted to conclude that good or desirable ends justify the means. As both Dr. Martin Luther King, Jr. and Gandhi have observed, the means *are* the end in a democracy and good ends cannot come from questionable means.

Public officials are stewards of the public's trust in both their institutions and their leaders. Central to that trust is a fair and open process. Conscientious attention to laws and principles of fair and open government will help you as a leader pursue both good means and good ends.

Resources for Further Information

For more information about ethics laws and principles, check out the following resources:

- California Attorney General Publications: www.caag.state.ca.us/publications/index.htm (click on ''ethics'')
- Fair Political Practices Commission Publications: http://www.fppc.ca.gov/index.php?id=226
- Institute for Local Government Ethics Resource Center: www.ca-ilg.org/trust

Disclaimer: Open meeting practices continue to evolve as the COVID-19 crisis continues and agencies use a wide range of technology to meet their needs. The information provided in this document is for general informational purposes only and is not intended to provide legal advice to any individual or entity. ILG urges you to consult with your own legal advisor before taking any action based on this information.

References

[1] Cal. Gov't Code § 53235(a), (b).

[2] Cal. Gov't Code § 53234(c).

[3] Cal. Gov't Code § 53234(d)(3), (4).

[4] This is a requirement of the Political Reform Act. *See generally* Cal. Gov't Code §§ 87200 and following.

[5] *See* Cal. Gov't Code §§ 87200-87210; 2 Cal. Code Regs. §§ 18723-18740.

[6] *See generally* Cal. Gov't Code §§ 84100 and following; 2 Cal. Code Regs. §§ 18401 and following.

[7] *See* Cal. Gov't Code § 82015(b)(2)(B)(iii).

[8] *See generally* Cal. Gov't Code §§ 54950 and following (for cities, counties, special districts and school districts); Cal. Educ. Code §§ 72121 and following (for community college district governing boards).

[9] *See* Cal. Gov't Code 54952.2(a); Cal. Gov't Code § 54954.2(a).

[10] Cal. Gov't Code § 54952.2(a).

[11] Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.

[12] Cal. Gov't Code § 54952.2.

[13] Cal. Gov't Code § 54952.2(c)(2).

[14] Cal. Gov't Code § 54952.2(c)(5).

[15] *See* Cal. Gov't Code § 54954.5; Cal. Educ. Code § 71122.

[16] Cal. Gov't Code § 54954.2(a): Cal. Educ. Code § 72121.

[17] Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.

[18] Cal. Gov't Code § 54954.3(a).

[19] Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

[20] Cal. Gov't Code § 54957.5.

[21] *See generally* Cal. Gov't Code §§ 6250 and following.

[22] Cal. Gov't Code § 6252(d).

[23] Cal. Gov't Code § 6252(e).

[24] City of San Jose vs. Superior Court of the County of Santa Clara, 2 Cal. 5th 608 (2017)

[25] *Nasha v. City of Los Angeles*, 125 Cal. App. 4th 471 (2004).

[26] *See Fairfield v.* Superior *Court*, 14 Cal. 3d 768 (1975); *Mennig v. City Council*, 86 Cal. App. 3d 341 (1978).

[27] *See generally* Cal. Civ. Proc. Code § 1094.5.

[28] *See Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996) (requiring council to rehear an appeal from the planning commission's decision and provide a fair hearing).

[29] *See* 42 U.S.C. §§ 1983, 1988.

[30] *See Lacy Street Hospitality Service v. City of Los Angeles*, 22 Cal. Rptr. 3d 805 (2004) (depublished 2005 Daily Journal D.A.R. 84). This case may not be cited as precedent and is provided here only as an illustration.

[31] Cal. Gov't Code § 84308.

[32] *See* Cal. Gov't Code § 84308(a)(3); 2 Cal. Code Regs. § 18438.1.

[33] *See* Cal. Gov't Code § 84308(b).

[34] *See* Cal. Gov't Code § 1126.

[35] People ex rel. Chapman v. Rapsey, 16 Cal. 2d 636, 641-642 (1940)

[36] *See* Cal. Pub. Cont. Code § 100.

[37] *Smith v. City of Riverside*, 34 Cal. App. 3d 529 (1973).

[38] Cal. Gov't Code §§ 54201 and following.

[39] Cal. Pub. Cont. Code §§ 20160-20162.

[40] Cal. Pub. Cont. Code §§ 20120-20123.

[41] Cal. Pub. Cont. Code § 20163.

[42] *See, e.g.,* Cal. Pub. Cont. Code § 20164.

[43] *See* 2 Cal. Code Regs. § 18703.5.

[44] Cal. Gov't Code § 82029; 2 Cal. Code Regs. § 18229.

[45] See Rushworth M. Kidder, Moral Courage: Taking Action When Your Values Are Put to the Test (William Morrow, 2005).

[46] See Rushworth M. Kidder, How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living (Simon and Schuster, 1995) 13-49.

APPENDIX C- BROWN ACT AND TELECONFERENCE MEETING REQUIREMENTS

Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024

LEAGUE OF CALIFORNIA CITIES

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

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Cal Cities thanks the following individuals for their work on this publication:

Brown Act Committee

Tracy M. Noonan, Committee Chair
City Attorney, Thousand Oaks

Amy Ackerman
Town Attorney, Corte Madera; Renne Public Law Group

Sheri Damon
City Attorney, Seaside

Christopher Diaz
City Attorney, Colma and Hillsborough
Best Best & Krieger LLP

Megan J. Marevich
Assistant City Attorney, Mountain View

Javan N. Rad
Chief Assistant City Attorney, Pasadena

Prasanna W. Rasiah
City Attorney, San Mateo

Sujata Reuter
Chief Assistant City Attorney, Santa Clara

Robert Schultz
Attorney

Frank A. Splendorio
City Attorney, Atwater and Plymouth
Best Best & Krieger LLP

Osa Wolff
City Attorney, Orinda
Shute, Mihaly & Weinberger LLP

Cal Cities Staff

Sheri Chapman, *General Counsel*

Alison Leary, *Senior Deputy General Counsel*

Janet Leonard, *Executive Assistant, Legal Services*

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

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

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

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

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

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

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

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

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

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

Broad coverage

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates, or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference or videoconference.

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

Narrow exemptions

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

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

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

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

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

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

Public participation in meetings

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

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and limits on the time allotted to each speaker. For more information, see chapter 4.

Controversy

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

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

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

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

Beyond the law — good business practices

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

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

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

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.

- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

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

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

Achieving balance

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

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

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

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

Historical note

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

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

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

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

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

ENDNOTES

1 Cal. Gov. Code, § 54950.

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

3 Cal. Gov. Code, § 54953, subd. (a).

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

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

6 Cal. Gov. Code, § 54953.7.

Chapter 2

LEGISLATIVE BODIES

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Chapter 2

LEGISLATIVE BODIES

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

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

A "legislative body" includes the following:

- The **"governing body** of a local agency" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards, and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision, or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]
- **Newly elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.[7] Thus, meetings between incumbents and newly elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

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

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

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

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates committees on budget and finance or on public safety that are not limited in duration or scope, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11] A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.[12] For more information, see chapter 3.
- The governing body of any **private organization** either (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company, or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[13] These include some nonprofit corporations created by local agencies.[14] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[15] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[16]

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

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

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

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

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

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.[17]

What is 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.[18] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[19]
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[20]

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

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

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

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

- Individual decision-makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads is not subject to the Brown Act since such assemblies are not those of a legislative body.[21]
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[22]
- County central committees of political parties are also not Brown Act bodies.[23]

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

ENDNOTES

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

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

3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.

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

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

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

7 Cal. Gov. Code, § 54952.1.

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

9 Cal. Gov. Code, § 54952, subd. (b)

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

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

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

13 Cal. Gov. Code, § 54952, subd. (c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996, who, after that date, is made a nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).

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

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

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

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

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

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

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

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

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

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

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

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Chapter 3

MEETINGS

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

Brown Act meetings

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

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

Six exceptions to the meeting definition

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

Individual contacts

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

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

Conferences

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

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

Community meetings

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

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

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

A. *Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.*

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

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

Other legislative bodies

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

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

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

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

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

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

Standing committees

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

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

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

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

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

Social or ceremonial events

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

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

Grand Jury Testimony

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

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

Retreats, trainings, and workshops of legislative bodies

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, or team building and group dynamics.[11]

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

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

Serial meetings

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

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

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

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

The Brown Act is violated, however, if several one-on-one meetings or conferences lead to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum

of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

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

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you, I'd be over the top."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

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

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

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

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "I'm sure Council Member Jones is OK with these changes. How are you leaning?"

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

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

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

Q. Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?

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

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

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

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the "reply all" option that may inadvertently result in a Brown Act violation. Staff should consider using the "bcc" (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to "reply all."

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

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

Informal gatherings

Members of legislative bodies are often tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.[20] A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

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

A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence does not lessen the potential for a violation of the Brown Act.

Technological conferencing

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

Except for certain non-substantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But in an effort to keep up with modern technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.[21] While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

Teleconference is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."[22] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[23]

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

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

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

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

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

Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.[25]

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:[26]

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

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

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

- Participate in multiagency meetings or discussions; however, such meetings must be held within the boundaries of one of the participating agencies, and all of those agencies must give proper notice.
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries, or meet at its principal office if that office is located outside the territory over which the agency has jurisdiction.

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.[27]

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.[28] A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.[29]

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.[30] State law has also allowed for virtual meetings under certain emergency situations.[31]

ENDNOTES

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

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

3 Cal. Gov. Code, § 54954, subd. (a).

4 Cal. Gov. Code, § 54956.

5 Cal. Gov. Code, § 54956.5.

6 Cal. Gov. Code, § 54955.

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

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

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

10 Cal. Gov. Code, § 54953.1.

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

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

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

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

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

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

17 Cal. Gov. Code, § 54957.5, subd. (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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

Agendas for regular meetings

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

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

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

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

awareness, among other factors.[8] For these reasons, obvious website technical difficulties might not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

The agenda must state the meeting time and place and must contain "a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session."[9] For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a "project" must be avoided if the "project" is actually a set of distinct actions, in which case each action must be listed separately on the agenda.[10] For example, the listing of an "initiative measure" alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.[11]

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

A brief general description may not be sufficient for closed-session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions.[12] Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

Mailed agenda upon written request

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, if requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.[13]

Notice requirements for special meetings

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

The notice must state the time and place of the meeting as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).[14]

As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

The special meeting notice must also be posted at least 24 hours prior to the special meeting using the same methods as posting an agenda for a regular meeting: at a site that is freely accessible to the public, and on the agency's website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.[15]

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[16] If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.[17] A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.[18]

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.[19] News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

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

Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.[20]

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

Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.[21] However, they are generally consistent with the Brown Act. An item is probably void if not posted.[22] A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and can address the board on those items.[23]

Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.[24] Although written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments, as those are governed by the California Constitution, Article XIIIC or XIIID, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a

mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.[25] As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:[26]

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

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

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

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

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

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

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

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

Responding to the public

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on their own activities.[27] However, caution should be used to avoid any discussion or action on such items.

> **Council Member Jefferson: I would like staff to respond to Resident Joe's complaints during public comment about the repaving project on Elm Street. Are there problems with this project?**
>
> **City Manager Frank: The public works director has prepared a 45-minute PowerPoint presentation for you on the status of this project and will give it right now.**
>
> **Council Member Brown: Take all the time you need; we need to get to the bottom of this. Our residents are unhappy.**

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

The right to attend and observe meetings

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

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.[28]

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.[29] This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.[30]

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[31]

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

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.[33]

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

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

The legislative body may remove persons from a meeting who willfully interrupt or disrupt proceedings.[34] Ejection is justified only when audience members actually disrupt the proceedings,[35] or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).[36] If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.[37]

Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.[38] A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.[39]

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

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

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

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

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A nonexempt or otherwise non-privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose, and the agendas for all meetings of the legislative body must include the address of this office or location.[40] The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.[41]

A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body.
- After the meeting if prepared by some other person.[42]

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

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.[44] The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.[45]

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

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[47]

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

The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.[48]

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

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

Moreover, the Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.[49] However, this prohibition does not provide immunity for defamatory statements.[50]

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

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

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

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

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.[51] Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.[52]

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a regular (but not special) public meeting if all interested members of the public had the opportunity to

speak on the item before or during its consideration, and if the item has not been substantially changed.[53]

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.[54]

ENDNOTES

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

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

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

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

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

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

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

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

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

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

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

12 Cal. Gov. Code, § 54954.5.

13 Cal. Gov. Code, § 54954.1.

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

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

16 Cal. Gov. Code, § 54955.

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

18 Cal. Gov. Code, § 54955.1.

19 Cal. Gov. Code, § 54956.5.

20 Cal. Gov. Code, § 54952.3.

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

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

23 Cal. Edu. Code, § 35145.5

24 Cal. Edu. Code, § 54954.6

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

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

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

28 Cal. Gov. Code, § 54953.3.

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

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

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

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

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

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

35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit "insolent" remarks by members of the public absent actual disruption); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as "likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting").

36 Cal. Gov. Code, § 54957.95.

37 Cal. Gov. Code, § 54957.9.

38 Cal. Gov. Code, § 54957.5.

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

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

41 Cal. Gov. Code § 54957.5.

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

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

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

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

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

47 Cal. Gov. Code, § 54953.6.

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

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

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

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

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

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

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

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Chapter 5

CLOSED SESSIONS

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

As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.[2] The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.[3]

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

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

Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.[5] An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly put on the agenda as a

closed session item or unless it is properly added as a closed-session item by a two-thirds vote of the body after making the appropriate urgency findings.[6]

The Brown Act supplies a series of fill-in-the-blank sample agenda descriptions for various types of authorized closed sessions that provide a "safe harbor" from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multijurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

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

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

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

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

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

Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.[13] The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.[14] The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel and required support staff.[15] For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.[16]

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

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

Existing litigation

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

A. *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*[19]

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.[20]

Anticipated exposure to litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.[21] The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.[22]

Anticipated initiation of litigation by the local agency

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

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.[23] Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

Real estate negotiations

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.[24] Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues, such as site design, architecture, or other aspects of the project for which the transaction is contemplated.[25]

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

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

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern,[26] and the names of the parties with whom its negotiator may negotiate.[27]

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.[28]

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

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

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

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

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

Public employment

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."[29] The purpose of this exception — commonly referred to as the "personnel exception" — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.[30] The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.[31] That authority may be delegated to a subsidiary appointed body.[32]

An employee must be given at least 24 hours' notice of any closed session convened to hear specific complaints or charges against them. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,[33] and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.[34] The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.[35] If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.[36]

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.[37]

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

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

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.[38] An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[39] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

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

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.[40] However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.[41]

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

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

Labor negotiations

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,[42] on employee salaries and fringe benefits for both represented ("union") and unrepresented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an "employee" includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.[43]

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

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.[44]

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.[45] The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization.
2. A meeting of a mediator with either side.
3. A hearing or meeting held by a fact finder or arbitrator.
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[46]

Public participation under the Rodda Act also takes another form.[47] All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.[48] The final vote must be in public.

Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.[49]

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

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.[50] Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.[51]

Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.[52]

License applicants with criminal records

A closed session is permitted when an applicant who has a criminal record applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw it, the body must deny the license in public, either immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.[53]

Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings; essential public services, including water, sewer, gas, or electric service; or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials, including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.[54] Action taken in closed session with respect to such public security issues is not reportable action.

Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.[55]

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.[56]

Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals under other provisions of law:[57]

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

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

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district's dissolution.[58]

Other legislative bases for closed session

Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to review the Brown Act carefully to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including a response to a confidential final draft audit report from the Bureau of State Audits,[59] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[60] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[61] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[62] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[63]

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

Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official or essential role in the closed session subject matters must be excluded from closed sessions.[65]

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

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

The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.[66] It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.[67] Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.[68]

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

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information regarding pending litigation that was received during a closed session,[69] though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.[70] In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief and, if the breach is a willful disclosure of confidential information, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.[71]

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure (1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; (2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or (3) is information that is not confidential.[72]

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

> **"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.**
>
> **"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."**
>
> *The first comment to the press may be appropriate if it is a part of an action taken by the city council in closed session that must be reported publicly.[73] The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

ENDNOTES

1 Cal. Gov. Code, § 54962.

2 Cal. Const. , Art. 1, § 3.

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

4 Cal. Gov. Code, § 54957.1.

5 Cal. Gov. Code, § 54954.5.

6 Cal. Gov. Code, § 54954.2.

7 Cal. Gov. Code, § 54954.5.

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

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

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

11 Cal. Gov. Code, § 54957.2.

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

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

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

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

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

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

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

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

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

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

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

23 Cal. Gov. Code, § 54957.1.

24 Cal. Gov. Code, § 54956.8.

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

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

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

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

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

30 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

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

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

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

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

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

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

37 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87.

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

39 Cal. Gov. Code, § 54957.

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

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

42 Cal. Gov. Code, § 54957.6.

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

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

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

46 Cal. Gov. Code, § 3549.1.

47 Cal. Gov. Code, § 3540.

48 Cal. Gov. Code, § 3547.

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

50 Cal. Edu. Code, § 72122.

51 Cal. Edu. Code, § 60617.

52 Cal. Gov. Code, § 54956.96.

53 Cal. Gov. Code, § 54956.7.

54 Cal. Gov. Code, § 54957.

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

56 Cal. Gov. Code, § 54957.8.

57 Cal. Gov. Code, § 54962.

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

59 Cal. Gov. Code, § 54956.75.

60 Cal. Gov. Code, § 54956.81.

61 Cal. Gov. Code, § 54956.86.

62 Cal. Gov. Code, § 54956.87.

63 Cal. Gov. Code, § 54956.95.

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

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

66 Cal. Gov. Code, § 54963.

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

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

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

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

71 Cal. Gov. Code, § 54963.

72 Cal. Gov. Code, § 54963.

73 Cal. Gov. Code, § 54957.1.

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Chapter 6

REMEDIES

A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

Invalidation of action taken

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

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites the wrong Brown Act section but adequately advises the public that the legislative body will meet with legal counsel to discuss potential litigation in closed session.[2]
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.[3]
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment.[4]
- Those connected with the collection of any tax.[5]
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.[6]

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation, or within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.[7] The legislative body then has up to 30 days to cure and correct its action.[8] The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.[9]

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

Declaratory relief to determine whether past action violated the act

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

The legislative body's unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.[17] The unconditional commitment must be substantially in the form set forth in the Brown Act.[18] No legal action may thereafter be commenced regarding the past action.[19] However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act, and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.[20]

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.[21]

Civil action to prevent future violations

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

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body.
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.
- Compel the legislative body to audio-record its closed sessions.[22]

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

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.[23] A court may not compel elected officials to disclose their recollections of what transpired in a closed session.[24]

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

Costs and attorney's fees

A plaintiff who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.[27] When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Brown Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.[28]

Misdemeanor penalties

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

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

"Action taken" is not only an actual vote but also a collective decision, commitment, or promise by a majority of the legislative body to make a positive or negative decision.[30] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[31] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[32] There is no case law to support this view. If anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[33]

Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body and its members. It is in the agency's interest to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

Overall, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

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

ENDNOTES

1 Cal. Gov. Code, § 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision), sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions), 54954.6 (tax hearings), 54956 (special meetings), and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but they are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198.

3 Cal. Gov. Code, § 54960.1(d)(2).

4 Cal. Gov. Code, § 54960.1(d)(3).

5 Cal. Gov. Code, § 54960.1(d)(4).

6 Cal. Gov. Code, § 54960.1(d)(5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 916 and fn.6.

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

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

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

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

28 Cal. Gov. Code, § 54960.5.

29 Cal. Gov. Code, § 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both (California Penal Code section 19). Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

30 Cal. Gov. Code, § 54952.6.

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

32 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

33 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8200 | Fax: (916) 658-8240
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William D. Ross
A Professional Corporation

File No.199/6

ATTORNEY-CLIENT
PRIVILEGED COMMUNICATION

VIA E-MAIL

TO: City of American Canyon Legislative and Advisory Bodies

DATE: March 6, 2023

CC: Jason B. Holley, City Manager
Maria Ojeda, Assistant City Manager
Taresa Geilfuss, City Clerk

FROM: William D. Ross, City Attorney
David Schwarz, Deputy City Attorney

RE: AB 2449 Refresher – Brown Act Procedures for Teleconferencing

---

This is an attorney-client privileged communication which supplements our November 1, 2022 memorandum to the City Council, summarizing changes in state law that modified the Brown Act's teleconferencing procedures.

On February 28, 2023, Governor Newsom rescinded the COVID-19 state of emergency that had been in effect for nearly three years. Because of this, the City of American Canyon (City) and other public agencies can no longer utilize the AB 361 teleconferencing procedures that were used during the pandemic.

AB 361 provided broad authority for public agencies to use video conferencing platforms, like Zoom or Microsoft Teams, to conduct public meetings where members of the public and the agency's legislative/advisory councils and commissions could meet either *entirely or partially* remotely. However, AB 361 *requires* an ongoing state of emergency as declared by the Governor, so will therefore not be available unless or until a future state of emergency affecting the City is declared (*i.e.*, pandemic, flood, wildfire, *etc.*).

However, beginning January 1, 2023, newly enacted legislation, AB 2449 became effective providing a more rigid/restrictive than AB 361, but is still more flexible than the Brown Act's "traditional" rules on teleconferencing. Stated differently, AB 2449 is a "middle ground" between the traditional rules and AB 361. AB 2449 will be in effect until January 1, 2026, and may be extended by future legislation.

AB 2449's procedures, outlined below, can be used by any and all of the City's legislative and advisory bodies when they hold public meetings, including the City Council, Planning Commission, Parks and Community Services Commission, and the Open Space, Active Transportation and Sustainability Commission, as well as the Board of Directors for the American Canyon Fire Protection District.

Traditional Teleconferencing Rules

The Brown Act's traditional teleconferencing rules remain in effect, and are still an option.

The traditional (pre-COVID) Brown Act teleconferencing rules for public meetings requires: (1) at least a quorum to meet physically in-person within the City's boundaries; (2) that location available to public to physically attend; (3) *and* that any member who participates remotely must have the address of their remote location listed on the Agenda *and allow in-person public access at that remote location.*

Because the traditional rules require listing any member's remote location on the agenda and making it available to the public, it is not well equipped for unexpected events arising after the agenda is posted that may necessitate a member's remote attendance.

Requirements and Limits of AB 2449

As stated above, AB 2449 marks a partial move back towards the traditional teleconferencing rules, while still giving a degree of flexibility for remote attendance. AB 2449 adds new teleconferencing procedures that do *not* require a state of emergency. (Government Code Section 54953(f)).[1]

AB 2449 requires at least a quorum of members to participate in person from a single, publicly available location that is identified on the meeting agenda. (Section 54953(f)(1)). A member may no longer participate from a remote location within the City and cannot count as a part of the quorum.

If the physical quorum requirement is met, AB 2449 permits any absent member to attend virtually under two situations: **(1)** for "just cause;" and, **(2)** due to "emergency circumstances."

1. Virtual Attendance for "Just Cause"

Grounds for "Just Cause" - AB 2449 lists specific grounds that are considered "just cause."

- There is a childcare or caregiving need (for a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner) that requires the member to participate remotely;
- A contagious illness prevents the member from attending in person;

[1] Unless otherwise noted, all section references are to the Government Code.

- There is a need related to a defined physical or mental disability that is not otherwise accommodated for; or
- Traveling while on official City business or for another state or local agency.

(Section 54953(j)(2)).

Notification - For "just cause" remote attendance, a member must **(1)** notify the legislative/advisory body at the earliest opportunity of the need for remote participation, **and (2)** provide a general description of the circumstances justifying their virtual attendance. (Section 54953(f)(2)(A)(i)). This notification can be made as late as the start of a regular meeting. (*Id*.)

No Vote or Approval Necessary – The legislative/advisory body does not need to vote on or approve a notification for "just cause" remote attendance. The member's remote attendance, however, should be noted on the record and in the Meeting Minutes.

Limited to two (2) Annual Uses - A member can only utilize the "just cause" authorization twice per calendar year. (Section 54953(f)(2)(A)(i)).

2. Virtual Attendance Due to "Emergency Circumstances"

"Emergency Circumstance" Defined - AB 2449 defines "emergency circumstances" as "a physical or family medical emergency that prevents a member from attending the meeting in person." (Section 54953(j)(1)).

Timing and Procedure: Unlike remote attendance for "just cause," remote attendance due to "emergency circumstances" is not granted as a matter of course – instead it requires the remote member to submit a request and that a vote be conducted by the legislative/advisory body to approve or deny the request. That vote should be conducted at the start of the meeting. (Section 54953(f)(2)(A)(ii).

The member must further provide a general description of the emergency circumstance justifying such attendance. (Section 54953(f)(2)(A)(ii)). However, the member is not required to disclose any medical diagnosis, disability, or personal medical information. (Section 54953 (f)(2)(A)(ii)).

The request to participate remotely must be made "as soon as possible." (Section 54953(f)(2)(A)(ii)(I)). However, if the request does not allow enough time for it to be placed on the agenda, the legislative body may still take action on the request. (Section 54954.2(b)(4)). If the legislative body votes not to accept the member's basis for virtual attendance, then that member may only participate as a general member of the public and *cannot* vote on any agenda item.

3. Additional Requirements for Remote Participation under AB 2449

In addition to requiring justification as either "just cause" or an "emergency circumstance" for remote appearance, AB 2449 imposes the following additional requirements:

- *Quorum:* As stated above, at least a quorum must participate from the same physical location that is available to the public.

- *Noted for the Record*: The request for remote attendance should be stated on the record at the beginning of each public meeting. Staff should keep a record of how many times each member has appeared remotely and the grounds for appearing remotely.

- *Disclosure of other Individuals Present*: Before any action is taken during the meeting, the remote member must publicly disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and describe the general nature of the member's relationship with any such individuals.

- *Audio AND Visual Required:* The member participating remotely must participate through *both* audio and visual technology. That is, appearance by telephone without video is not authorized, and a member should not turn off their camera during the meeting.

- *Limited Number of Uses*: Each member's *total* remote participation *cannot be for more than three (3) consecutive months, **nor** 20 percent of the regular meetings* within a calendar year. For legislative bodies that have less than 10 regular meetings in a calendar year, a member cannot participate remotely for more than two (2) meetings.

- *Each Meeting Treated Separately*: A notification (for just cause grounds) or request (for emergency grounds) is required for *each* meeting a member remotely attends. That is, a single notification/request cannot be made for multiple meeting dates.

- *No Resolution Required*. Unlike AB 361, which required monthly Resolutions of the City Council, AB 2449 contains no such requirement.

  (*See*, Section 54953(f))

4. Technological Requirements and Agenda Posting

AB 2449 requires that the public have audio *and* visual access to the meeting. This can be accomplished *either* by a two-way audiovisual program (such as Zoom) *or* a two-way telephonic service combined with live webcasting (for example, members of the public calling a conference line for audio participation while accessing the live video feed on YouTube). That is, the public must be able to remotely hear, observe, and address the legislative body in real time during the meeting. (Section 54953(f)(1)(A).

Importantly, when AB 2449 is being utilized, in the event that the City experiences a disruption in streaming the meeting (such as a power or internet outage), *then no action may be taken on any* agenda item until the public's access has been restored. For this reason, having alternative/redundant methods of access may be beneficial to avoid the need to halt a meeting. As mentioned above, this could be accomplished by Zoom, while also having a phone line paired with a live video feed on YouTube or a local public television station as a backup option.[2]

As with all public meetings, the City must timely post the agenda and issue all necessary meeting notices. Such materials should indicate how the public may access the meeting and how public comment may be given. (Section 54953(f)(1)(B)).

Under AB 2449, the agenda does *not* need to be posted at all teleconferencing locations (54953(f)(1)), only the physical location at which a quorum of the legislative body will conduct the meeting needs to be made available to the public. (*Id*). The agenda and advisory meeting notices do *not* need to list the individual locations of the members who are participating remotely, and those locations do *not* need to be made open to the public. For example, if a member participates remotely from their home or any other remote location, then their address does *not* need to be disclosed, nor does their location need to be made open to the public.

Conclusion

AB 2449's procedures represent a partial shift back toward the more restrictive, pre-COVID teleconferencing procedures, but nonetheless allow some flexibility for members to attend remotely on a case-by-case basis.

[2] We are informed that, like many agencies, the City will continue to allow the public to access meetings by Zoom, even when all members of a body are present. Even in scenarios where AB 2449 is not being used (*i.e.*, all members are physically present at the meeting location) it is still advisable to have redundant/backup means of access, in case Zoom connectivity is lost.

We will continue to monitor updates to AB 2449 as well as practical “best practice” that evolve as public agencies familiarize themselves with the new procedures.

In the meantime, please contact our office if you have any questions.

WDR/DPS

AB 2449 – Teleconferencing Requirements

NOTE: The traditional Brown Act Teleconference option is still in place for an advanced publicly noticed teleconference location which is accessible to the public. Please see Brown Act Teleconference Options Memo for more information. AB 2449 provides these additional options:

"Just Cause"	**"Emergency Circumstances"**
Timing and Procedure The member notifies the legislative body at the earliest opportunity possible (can be as late as the start of a regular meeting) of their need to participate remotely for "just cause," including a general description of the circumstances justifying their need to appear remotely. *Qualifying Reason* "Just cause" means any of the following: • A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely • A contagious illness that prevents a member from attending in person • A need related to a physical or mental disability not otherwise accommodated for • Travel while on official business of the legislative body or another state or local agency Note: A member is limited to two virtual attendances based on "just cause" per calendar year.	*Timing and Procedure* The member requests the legislative body as soon as possible to allow them to participate in the meeting remotely due to "emergency circumstances" and provides a general description of the circumstances justifying their need to appear remotely. *and* The legislative body takes action to approve the request. If the request does not allow sufficient time to place proposed action on such a request on the posted agenda for the meeting for which the request is made, the legislative body may take action at the beginning of the meeting in accordance with existing Brown Act provisions to add an item to the agenda. *Qualifying Reason* "Emergency circumstances" means a physical or family medical emergency that prevents a member from attending in person (does not require disclosure of any medical diagnosis or disability, or any personal medical information that is already exempt under existing law). Note: The member must make a separate request for each meeting in which they seek to participate remotely.

Other Requirements

Under either "just cause" or "emergency circumstances":

- The member must publicly disclose at the meeting, before any action is taken, whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individual(s).
- The member must participate through *both* audio and visual technology (cannot turn off camera).
- Teleconferencing by a member may not be for a period of
  - more than three consecutive months or 20 percent of the regular meetings for the local agency within a calendar year, *or*
  - more than two meetings if the legislative body regularly meets fewer than 10 times per calendar year
- The public must be able to participate remotely through either:
  - A two-way audiovisual platform (defined to mean an online platform that provides participants with the ability to participate in a meeting via both an interactive video conference and a two-way telephonic function); and/or
  - A two-way telephonic service *and* a live webcasting of the meeting (defined to mean a telephone service that does not require internet access, is not provided as part of a two-way audiovisual platform, and allows participants to dial a telephone number to listen and verbally participate.
- All votes must be by roll call.

APPENDIX D - PUBLIC RECORDS ACT

THE PEOPLE'S BUSINESS:

A Guide to the California Public Records Act

LEAGUE OF CALIFORNIA CITIES

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AUTHORS OF THE PEOPLE'S BUSINESS

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Gregory P. Priamos, Chair
City Attorney, Riverside

Timothy T. Coates
Greines, Martin, Stein, & Richland, LLP

Eric W. Danly
City Attorney, Cloverdale and Petaluma
Meyers Nave

Roxanne M. Diaz
City Attorney, Hidden Hills
Richards, Watson & Gershon

Shawn D. Hagerty
City Attorney, Santee
Best Best & Krieger

Jolie Houston
City Attorney, Los Altos
Berliner Cohen

Craig Labadie
City Attorney, Concord

Juli Christine Scott
Chief Assistant City Attorney, Burbank

Kristina R. Scott
Deputy City Attorney, Los Angeles

Eileen M. Teichert
City Attorney, Sacramento

Paul H. Zarefsky
Deputy City Attorney, San Francisco

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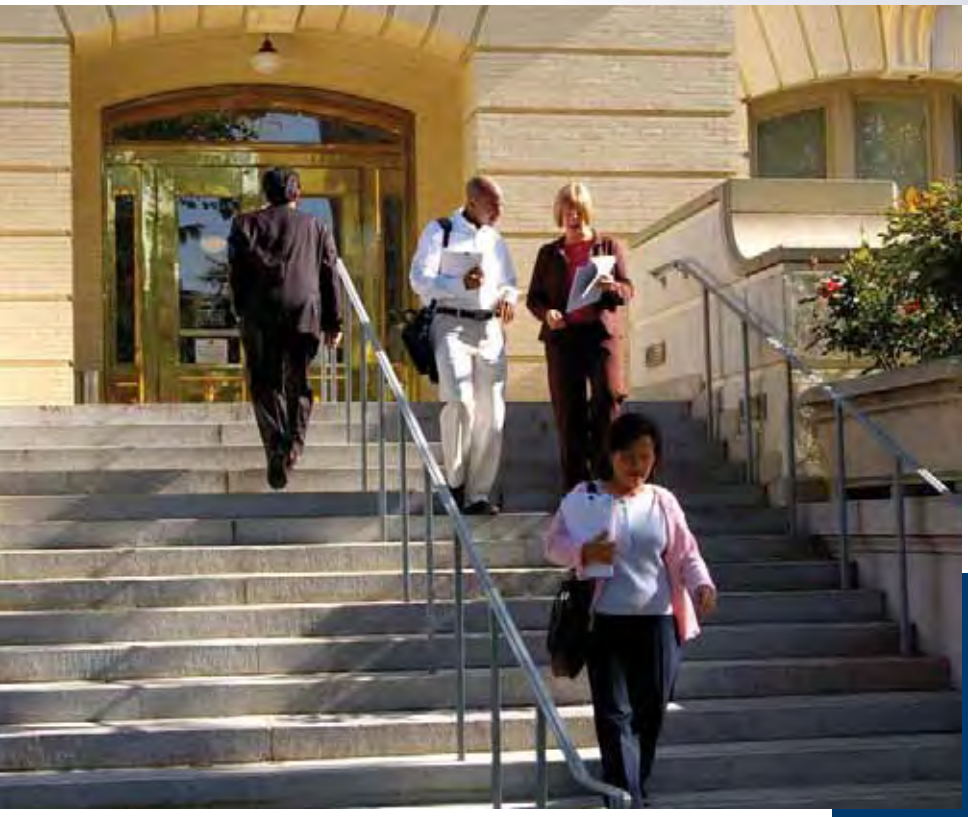
LEAGUE STAFF

Patrick Whitnell
General Counsel

Kourtney Burdick
Deputy General Counsel

Rhonda Boglin
Legal Assistant

THE PEOPLE'S BUSINESS:
A GUIDE TO THE PUBLIC RECORDS ACT



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CH. 2: THE BASICS

CH. 3: RESPONDING TO A PUBLIC RECORDS REQUEST

CH. 4: EXEMPTIONS

CH. 5: JUDICIAL REVIEW AND REMEDIES

CH. 6: RECORDS MANAGEMENT

THE PEOPLE'S BUSINESS:
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FOREWORD

The goal of this publication is to provide a comprehensive overview of the California Public Records Act for local government officials and employees, the public and the news media. This guide offers practical advice to assist local agencies in complying with the requirements of the Act and other related state laws. The guide is focused on settled law and is not intended to resolve emerging and unresolved legal issues.

The League thanks the following organizations representing diverse views and constituencies that reviewed, or were given the opportunity to review, this publication:

Association of California Water Agencies
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California Attorney General's Office
California Common Cause
California District Attorneys Association
California First Amendment Coalition
California Newspaper Publishers Association
California Redevelopment Association
California School Boards Association
California Special Districts Association
California State Association of Counties
Californians Aware
City Clerks Association of California
Community College League of California
First Amendment Project
League of Women Voters of California

This publication is current as of March, 2008. Updates to the publication responding to changes in the Public Records Act and related laws including court interpretations are available at www.cacities.org/opengov.

As used in this guide, "local agency" means all public agencies to which the Public Records Act applies. This publication is not intended to provide legal advice. A local agency's legal counsel is responsible for advising its governing body and staff, and should always be consulted when legal issues arise.

Additional copies of this publication as well as an individual table of "Frequently Requested Information and Records" may be purchased by visiting CityBooks online at www.cacities.org/store.

CHAPTER 1:
INTRODUCTION AND OVERVIEW

FUNDAMENTAL RIGHT OF ACCESS TO INFORMATION

FUNDAMENTAL RIGHT OF PRIVACY AND NEED FOR EFFICIENT AND EFFECTIVE GOVERNMENT

ACHIEVING BALANCE

PROPOSITION 59

BEYOND THE LAW

CHAPTER 1:
INTRODUCTION AND OVERVIEW

FUNDAMENTAL RIGHT OF ACCESS TO INFORMATION

The California Public Records Act[1] (the "Act") is an indispensable component of California's commitment to open government. The purpose of the Act is to give the public access to information that enables them to monitor the functioning of their government.[2] The Act's fundamental precept is that governmental records shall be disclosed to the public, upon request, unless there is a legal basis not to do so.

Practice Tip:

Express legal authority is required to justify denial of access to public records. The perception that disclosure of a record could lead to potential embarrassment of the local agency, alone, is not a legal basis for denying access.

The Act provides for two types of access. One is a right to inspect public records:

> "Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided."[3]

The other is a right to prompt availability of copies of those records:

> "Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so."[4]

These rights of access are by no means unlimited and do not extend to records that are exempt from disclosure. In fact, the Act was the culmination of a 15-year effort by the Legislature to create a comprehensive general records law that attempted to accumulate all the exemptions in one location. Previously, one was required to look at the law governing the specific type of record in question in order to determine its disclosability. The Act now expressly states or references other laws that are the sources of legal authority permitting records to be withheld.[5]

FUNDAMENTAL RIGHT OF PRIVACY AND NEED FOR EFFICIENT AND EFFECTIVE GOVERNMENT

Two recurring interests underlie many of the exemptions from disclosure. First, many exemptions under the Act are based on protecting an individual's fundamental right to privacy and permit withholding of, for example, certain personnel or medical records.[6] If personal information is required from a person (for example, a government employee or appointee, or an applicant for government employment/appointment, as a precondition for the employment or appointment), a court would likely recognize a privacy interest in such information.[7] However, if information is provided voluntarily in order to acquire a benefit, the information relates to serious wrongdoing, or the information is associated with an applicant's qualifications, a court is less likely to recognize a privacy right.[8]

Second, a number of exemptions are based on the government's need to perform its assigned functions in a reasonably efficient and effective manner, such as maintaining confidentiality of investigative records, official information, pending litigation records, and preliminary drafts. In addition, a record may be withheld whenever the public interest in nondisclosure clearly outweighs the public interest in disclosure.[9] The deliberative process privilege combines these two interests in affording a measure of privacy to decision makers and concurrently aiding in the efficiency and effectiveness of government.[10]

ACHIEVING BALANCE

In enacting the California Public Records Act, the Legislature struck a balance between two competing, fundamental interests. The legislative findings declare that access to information concerning the conduct of the people's business is a fundamental and necessary right for every person in the state and that the Legislature is "mindful of the right of individuals to privacy."[11] The Act balances these competing interests by preserving an "island of privacy upon the broad sea of enforced disclosure."[12] For the past forty years, courts have also balanced these competing interests in deciding whether to order disclosure of records.[13] In administering the provisions of the Act, agencies must often balance the right of public access against the right of privacy and the need for governmental efficiency and effectiveness.

PROPOSITION 59

In November 2004, the voters approved Proposition 59, amending the California Constitution to include the public's right to access public records. "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."[14]

Proposition 59 expressly states that "[t]his subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records…that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records."[15] The courts have not yet squarely ruled whether Proposition 59 provides the public with a greater right of access than is provided under the Act.

BEYOND THE LAW

The Act itself provides that "except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter."[16] A number of local agencies have gone beyond the mandates of the Act by adopting their own "sunshine ordinances" to afford greater public access.

To encourage local agencies' compliance, the Act provides for a mandatory award of court costs and attorney's fees to a prevailing plaintiff. A plaintiff need not obtain all of the requested records in order to be the prevailing party in litigation. A plaintiff is also considered the prevailing party if the lawsuit ultimately motivated the agency to provide the requested records.[17]

This publication is intended to help local agencies navigate the Act, comply with the spirit and intent of the Act, and interpret the Act in furtherance of open government. This publication is further intended to help members of the public understand their rights of access to public information, as well as the limitations on those rights.

Endnotes

1 Gov. Code, §§ 6250 et seq. All code references are to the California Code unless otherwise indicated.

2 *U.S. Dept. of Justice v. Reporters Com. for Freedom of Press* (1989) 489 U.S. 749; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

3 Gov. Code, § 6253, subd. (a).

4 Gov. Code, § 6253, subd. (b).

5 Gov. Code, §§ 6254, subd. (k), 6276.02 et seq.

6 Cal. Const., art. I, § 1; Gov. Code, §§ 6254, subd. (c), 6254, subd. (k), 6255; *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.

7 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal. App.4th 159; *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788.

8 *Calif. State Univ., Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *Register Div. Freedom Newspaper, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646; *Eskaton Monterey Hospital v. Myers* (1982) 134 Cal.App.3d 788; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742.

9 Gov. Code, § 6255.

10 See "Deliberative Process Privilege," p. 35.

11 Gov. Code, § 6250; Cal. Const., art. I, § 3, subd. (b)(3).

12 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.

13 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307; *Britt v. Superior Court* (1978) 20 Cal.3d 844.

14 Cal. Const., art. I, § 3, subd. (b)(1).

15 Cal. Const., art. I, § 3, subd. (b)(5).

16 Gov. Code, § 6253, subd. (e).

17 *Roberts v. City of Palmdale* (1993) 19 Cal.App.4th 469; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896.

CHAPTER 2:
THE BASICS

AGENCIES COVERED

WHAT ARE PUBLIC RECORDS?

WHO CAN REQUEST RECORDS?

CHAPTER 2:
THE BASICS

AGENCIES COVERED

The Act applies to state and local agencies. For purposes of the Act, a state agency is defined to mean "every state office, officer, department, division, bureau, board and commission or other state body or agency."[1] A local agency includes a county, city (whether general law or chartered), city and county, school district, municipal corporation, special district, community college district or political subdivision.[2] This encompasses any committees, boards, commissions or departments of those entities as well. Nonprofit entities that are legislative bodies under the Brown Act are also subject to the Act. Private nonprofit entities that are delegated legal authority to carry out public functions are also subject to the Act if they are funded with public money.[3]

The Act does not apply to the Legislature or the judicial branch.[4] The Legislative Open Records Act covers the Legislature.[5] Most court records are disclosable as a matter of public right of access to courts under the First Amendment of the United States Constitution.[6]

WHAT ARE PUBLIC RECORDS?

The Act defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics."[7] A writing is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."[8]

The definition of a public record is quite broad and is intended to encompass much more than written or printed documents. A public record is subject to disclosure under the Act "regardless of its physical form or characteristics."[9] For example, email messages and other electronic information are public records if they otherwise meet the statutory definition.

Over the years the courts have both broadened and limited the scope of the definition of a "public record." First, it is clear that the term "public records" encompasses more than simply those documents that public officials are required by law to keep as official records. Courts have held that a public record is one that is "necessary or convenient to the discharge of [an] official duty" such as a status memorandum provided to the City Manager on a pending project.[10] Second, courts have observed that merely because the writing is in the possession of the local agency, it is not automatically a public record. It must relate to the conduct of the public's business.[11] For example, records containing purely personal information unrelated to the conduct of the people's business, such as an employee's personal address list or grocery list, are considered outside the scope of the Act.[12]

WHO CAN REQUEST RECORDS?

All "persons" have the right to inspect and copy disclosable public records. A "person" need not be a resident of California or a citizen of the United States to make use of the Act.[13] "Persons" include corporations, partnerships, limited liability companies, firms or associations.[14] Often requesters include persons who have filed claims or lawsuits against the government, or who are investigating the possibility of doing so, or who just want to know what their government officials are up to. Local agencies and their officials are entitled to access public records on the same basis as any other person.[15] Further, local agency officials may access public records of their own agency that are otherwise exempt when authorized to do so as part of their official duties.[16] With certain exceptions, neither the media nor a person who is the subject of a public record has any greater right of access to public records than any other person.[17]

Endnotes

1 Gov. Code, § 6252, subd. (f). Excluded from the definition of state agency are those agencies provided for in article IV (except section 20(k)) and article VI of the Cal. Constitution.

2 Gov. Code, § 6252, subd. (a).

3 Gov. Code, § 6252, subd. (a), 85 Ops.Cal.Atty.Gen. 55 (2002).

4 Gov. Code, § 6252, subds. (a), (b); *Mack v. State Bar of Cal.* (2001) 92 Cal.App.4th 957.

5 Gov. Code, § 1070

6 *Pantos v. City and County of San Francisco* (1984) 151 Cal.App.3d 258; *Champion v. Superior Court* (1988) 201 Cal. App.3d 777

7 Gov. Code, § 6252, subd. (e).

8 Gov. Code, § 6252, subd. (g).

9 Gov. Code, § 6252, subd. (e).

10 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

11 Gov. Code, § 6252, subd. (e); *Braun v. City of Taft* (1984) 154 Cal.App.3d 332*; San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

12 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

13 Gov. Code, § 6252, subd. (c); *Connell v. Superior Court* (1997) 56 Cal.App.4th 601.

14 Gov. Code, § 6252, subd. (c).

15 Gov. Code, § 6252.5; *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759.

16 Gov. Code, § 6252, subd. (b). See also Gov. Code, § 54957.2.

17 *Marylander v. Superior Court* (2002) 81 Cal.App.4th 1119; *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal. App.661. See "Information That Must Be Disclosed," p. 22; "Requests for Journalistic or Scholarly Purposes," p. 24.

CHAPTER 3:
RESPONDING TO A PUBLIC RECORDS REQUEST

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CHAPTER 3:
RESPONDING TO A PUBLIC RECORDS REQUEST

TYPES OF REQUESTS

There are two ways to gain access to a public record – inspecting the record at the local agency's offices, or obtaining a copy from the local agency. The local agency may not dictate to the requester which option must be used. That is the requester's decision. Indeed, a requester does not have to choose between inspection and copying but instead can choose both options. For example, a requester may first inspect a set of records, and then, based on that review, decide which records should be copied.

Practice Tip:

If the public records request does not make clear whether the requester wants to inspect or obtain a copy of the record or records being sought, the local agency should seek clarification from the requester without delaying the process of searching for, collecting, and redacting or "whiting out" exempt information in the records.

A requester may inspect public records during the local agency's regular office hours.[1] This does not mean that a requester has a right to demand to see a record and immediately gain access to it. The right to inspect is constrained by an implied rule of reason to protect records against theft, mutilation, or accidental damage, prevent interference with the orderly functioning of the office, and generally avoid chaos in record archives.[2] Moreover, the agency's time to respond to an inspection request is governed by the deadlines set forth below, which give the agency a reasonable opportunity to search for, collect, and, if necessary, redact exempt information prior to the records being disclosed in an inspection.[3]

If a copy of a record has been requested, the local agency generally must provide an exact copy except where it is "impracticable" to do so.[4] The term "impracticable" does not necessarily mean that compliance with the public records request would be inconvenient or time-consuming to the local agency. Rather, it means that the agency must provide the best or most complete copy of the requested record that is reasonably possible.[5] As with the right to inspect public records, the same rule of reasonableness applies to the right to obtain copies of records. Thus, the custodian may impose reasonable restrictions on general requests for copies of voluminous classes of documents.[6]

The Act does not provide for a standing or continuing request for documents that may be generated in the future. However, the Brown Act provides that a person may make a request to receive a mailed copy of the agenda, or all documents constituting the agenda packet for any meeting of the legislative body. This request shall be valid for the calendar year in which it is filed.[7]

FORM OF THE REQUEST

A public records request may be made in writing or orally, in person or by phone.[8] Further, a written request may be made in paper or electronic form and may be mailed, emailed, faxed, or personally delivered. A local agency may ask, but not require, that the requester put an oral request in writing. In general, a written request is preferable to an oral request because it provides a record of when the request was made and what was requested, and helps the agency respond in a more timely and thorough manner.

Practice Tip:

A public records request is different than a question or series of questions posed to local agency officials or employees. The Act creates no duty to answer written or oral questions submitted by members of the public. But if an existing and readily available record contains information that would directly answer a question, from a customer service standpoint, it is advisable to either answer the question or provide the record in response to the question.

CONTENT OF THE REQUEST

A public records request must reasonably describe an identifiable record or records.[9] It must be focused and specific[10] and clear enough so that the agency can decipher what record or records are being sought.[11] A request that is so open-ended that it amounts to asking for all of a department's files is not reasonable. If a request is not clear or is overly broad, the local agency still has a duty to assist the requester in reformulating the request to make it more clear or less broad.[12]

A request does not need to precisely identify the record or records being sought. For example, a requester may not know the exact date of a record or its title or author, but if the request is descriptive enough for the local agency to understand which records fall within its scope, the request is reasonable. Requests may identify writings somewhat generally by their content.[13]

No magic words need be used to trigger the local agency's obligation to respond to a request for records. The content of the request must simply indicate that a public record is being sought. Occasionally, a requester may incorrectly refer to the federal Freedom of Information Act ("FOIA") as the legal basis for the request. This does not excuse the agency from responding if the request seeks public records. A public records request need not state its purpose or the use to which the record will be put by the requester.[14] A requester does not have to justify or explain the reason for exercising a fundamental right.[15]

THE DUTY TO RESPOND

Under no circumstances should a local agency simply not respond to a public records request. Even if the request does not reasonably describe an identifiable record, the requested record does not exist, or the record is exempt from disclosure, the agency must respond.[16]

Practice Tip:

Though not legally required, a local agency may find it convenient to use a written form for public records requests, particularly for those instances when a requester "drops in" to an office and asks for one or more records. The local agency cannot require the requester to use a particular form, but having the form and even having agency staff assist with filling out the form may help agencies better identify the information sought, follow up with the requester using the contact information provided, and provide more effective assistance to the requester.

TIMING OF THE RESPONSE

Time is critical in responding to public records requests. A local agency must respond promptly, but no later than ten calendar days from receipt of the request, to notify the requester whether records will be disclosed.[17] If the request is received after business hours or on a weekend or holiday, the next business day may be considered the date of receipt. The ten-day response period starts with the first calendar day after the date of receipt.[18] If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.[19] The time limit for responding to a public records request is not necessarily the same as the time within which the records must be disclosed to the requester.[20]

EXTENDING THE RESPONSE TIME

A local agency may extend the ten-day response period for up to 14 additional calendar days because of the need:

- To search for and collect the requested records from field facilities or other establishments separate from the office processing the request;
- To search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request;

Practice Tip:

If a local agency is having difficulty responding to a public records request within the 10-day response period, and there are not grounds to extend the response period for an additional 14 days, the agency may obtain an extension by consent of the requester. Often a requester will cooperate with the agency, particularly if the requester believes the agency is acting reasonably and conscientiously in processing the request. It is also advisable to document in writing any extension agreed to by the requester.

- To consult with another agency having substantial interest in the request (such as a state agency), or among two or more components of the local agency (such as two city departments) with substantial interest in the request; and/or
- In the case of electronic records, to compile data, write programming language or a computer program, or to construct a computer report to extract data.[21]

No other reasons justify an extension of time to respond to a public records request. For example, a local agency may not extend the time on the basis that it has other pressing business, or that the employee most knowledgeable about the records sought is on vacation or otherwise unavailable.

If a local agency exercises its right to extend the response time beyond the ten-day period, it must do so in writing, stating the reasons for the extension and the anticipated date of the response within the 14-day extension period.[22] The agency does not need the consent of the requester to extend the time for response.

■ ASSISTING THE REQUESTER

Local agencies must provide assistance to requesters who are having difficulty making a focused and effective request.[23] To the extent reasonable under the circumstances, a local agency must:

- Assist the requester in identifying records that are responsive to the request or the purpose of the request, if stated;
- Describe the information technology and physical location in which the records exist; and
- Provide suggestions for overcoming any practical basis for denying access to records.[24]

Alternatively, the local agency may satisfy its duty to assist the requester if it gives the requester an index of records.[25] Ordinarily an inquiry into a requester's purpose in seeking access to a public record is inappropriate,[26] but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes identifiable records.[27]

■ LOCATING RECORDS

A local agency must make a reasonable effort to search for and locate the record or records that have been requested.[28] No bright-line test exists to determine whether an effort is reasonable. That determination will depend on the facts and circumstances surrounding each request. In general, upon the local agency's receipt of a public records request, those persons or offices within the agency that would most likely be in possession of responsive records should be consulted in an effort to locate such records.

The right to access public records is not without limits. A local agency is not required to perform a "needle in a haystack" search to locate the record or records sought by the requester.[29] Nor is it compelled to undergo a search that will produce a "huge volume" of material in response to the request.[30] On the other hand, an agency typically will endure some burden – at times, a significant burden – in its records search. Usually that burden alone will be insufficient to justify noncompliance with the request.[31] Nevertheless, if the request imposes a substantial enough burden, an agency may decide to withhold the requested records on the basis that the public interest in nondisclosure clearly outweighs the public interest in disclosure.[32]

REDACTING RECORDS

Some records contain information that must be disclosed, along with information that is exempt from disclosure. A local agency has a duty to provide such a record to the requester in redacted form if the nonexempt information is "reasonably segregable" from that which is exempt,[33] unless the burden of redacting the record becomes too great.[34] What is reasonably segregable will depend on the circumstances. If exempt information is inextricably intertwined with nonexempt information, the record may be withheld in its entirety.[35]

Practice Tip:

Care should be taken in deciding whether to disclose, withhold, or redact a record. When a public records request presents novel or complicated issues or implicates policy concerns or third party rights, it is advisable to consult with the local agency's legal counsel before making this decision.

TYPES OF RESPONSES

After conducting a reasonable search for requested records, a local agency has only a limited number of possible responses. If a search yields no responsive records, the agency must inform the requester. If the agency locates a responsive record, it must decide whether to:

- Disclose the record;
- Withhold the record; or
- Disclose the record in redacted form.

In responding to a written public records request, if the local agency does not have the record or has decided to withhold it, or if the requested record is disclosed in redacted form, the agency's response must be in writing, and must identify by name and title each person responsible for the decision.[36]

If the record is withheld in its entirety or provided to the requester in redacted form, the local agency must state the legal basis under the Act for its decision not to comply fully with the request.[37] Statements like "we don't give up those types of records" or "our policy is to keep such records confidential" will not suffice.

WAIVER

Generally, whenever a local agency discloses an otherwise exempt public record to any member of the public, the disclosure constitutes a waiver of most of the exemptions contained in the Act for all future requests for the same information.[38] There are a number of statutory exceptions to the waiver provisions, including disclosures made through discovery or other legal proceedings and disclosures to another governmental agency that agrees to treat the disclosed material as confidential.[39]

Practice Tip:

A local agency should always document that it is supplying the record to the requester. The fact and sufficiency of the response may become points of dispute with the requester. Any response that denies in whole or in part an oral public records request should be put in writing.

NO DUTY TO CREATE A RECORD OR TO CREATE A PRIVILEGE LOG

A local agency has no duty to create a record that does not exist at the time of the request.[40] There is also no duty to reconstruct a record that was lawfully discarded prior to receipt of the request.

The Act does not require a local agency to create a "privilege log" or list that identifies the specific records being withheld.[41] The response only needs to identify the legal grounds for nondisclosure. If the agency creates a privilege log for its own use, however, that document may be considered a public record and may be subject to disclosure in response to a later public records request.

TIMING OF DISCLOSURE

Although the law precisely defines the time for responding to a public records request, it is less precise in defining the deadline for disclosing records. The Act simply states that copies of records must be provided "promptly."[42] As for when a requester must be given access to inspect records, the Act is silent, but it is generally assumed that the same standard of promptness applies. Further, the Act states that nothing therein "shall be construed to permit an agency to delay or obstruct the inspection or copying of public records,"[43] which signals the importance of promptly disclosing records to the requester.

Practice Tip:

The local agency may wish to maintain a separate file for copies of records that have been withheld and those produced (including redacted versions) in the event there is a legal challenge to the decision regarding the disclosure.

Neither the ten-day response period nor the additional fourteen-day extension may be used to delay or obstruct the inspection or copying of public records.[44] For example, requests for commonly disclosed records that are held in a manner that allows for prompt disclosure should not be withheld because of the statutory response period.

As a practical matter, records often are disclosed at the same time the local agency responds to the request. But in some cases, that time frame for disclosure is not feasible because of the volume of records encompassed by the request.

FEES

Practice Tip:

When faced with a voluminous public records request, a local agency has numerous options – for example, asking the requester to narrow the request, asking the requester to consent to a later deadline for responding to the request, and providing responsive records (whether redacted or not) on a "rolling" basis, rather than in one complete package. It is sometimes possible for the agency and requester to work cooperatively to streamline a public records request, with the result that the requester obtains the records or information the requester truly wants, while the burdens on the agency in complying with the request are reduced.

The public records process is in many respects cost-free to the requester. No fees may be charged to reimburse the local agency's costs incurred to search for a record, review a record, redact a record, assist a requester in formulating a request, or respond to a request. Nor may the local agency charge a fee for the requester's inspection of a record, even if staff time is expended in the inspection. For example, if concern for the security of records requires that an agency employee sit with the requester during the inspection, or if a record must be redacted before it can be inspected, the agency may not bill the requester for this expenditure of staff time.

The local agency may charge a fee for the direct costs of duplicating a record when the requester is seeking a copy,[45] or it may charge a statutory fee, if applicable.[46] Direct costs of duplication include costs of reproduction, and conceivably the cost of staff time expended in making a copy of the record.[47] An agency may require payment in advance before providing the requested copies;[48] however, no payment can be required merely to look at a record where copies are not sought.

Although permitted to charge a fee for duplication costs, a local agency may choose to reduce or waive that fee.[49] For example, the agency might waive the fee in a particular case because the requester is indigent; or it might generally choose to waive fees below a certain dollar threshold because the administrative costs of collecting the fee would exceed the revenue to be collected. An agency may also set a customary copying fee for all requests that is below the amount that reflects actual duplication costs.

Endnotes

1 Gov. Code, § 6253, subd. (a).
2 *Bruce v. Gregory* (1967) 65 Cal.2d 666; *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754; 64 Ops.Cal.Atty.Gen. 317 (1981).
3 See "Timing of the Response," p. 11.
4 Gov. Code, § 6253, subd. (b).
5 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754.
6 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754; 64 Ops.Cal.Atty.Gen. 317 (1981).
7 Gov. Code, § 54954.1; see also Gov. Code § 65092 [standing request for notice of public hearing], Cal. Code Regs., tit. 14, ch. 3, §§ 15072, 15082 and 15087 [standing requests for notice related to environmental documents].
8 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.
9 Gov. Code, § 6253, subd. (b).
10 *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
11 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
12 See "Assisting the Requester," p. 12.
13 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
14 See Gov. Code, § 6257.5; *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d 440.
15 Gov. Code, § 6250; Cal. Const., article I, § 3.
16 Gov. Code, § 6253.
17 Gov. Code, § 6253, subd. (c).
18 Civ. Code, § 10.
19 Civ. Code, § 11.
20 See "Timing of Disclosure," p. 13.
21 Gov. Code, § 6253, subds. (c)(1) - (4).
22 Gov. Code, § 6253, subd. (c).
23 Gov. Code, § 6253.1; *State Board of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.
24 Gov. Code, § 6253.1, subds. (a)(1) - (3).
25 Gov. Code, § 6253.1, subd. (d)(3).
26 See Gov. Code, § 6257.5.
27 Gov. Code, § 6253.1, subd. (a).
28 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
29 *Cal. First Amend.Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
30 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
31 *Cal. First Amend. Coalition v. Superior Court* (1998) 67 Cal.App.4th 159.
32 *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d 440; see also 64 Ops. Cal.Atty.Gen. 317 (1981).
33 Gov. Code, § 6253, subd. (a); *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440.
34 *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440.
35 *ACLU Foundation v. Deukmejian* (1982) 32 Cal.3d. 440.
36 Gov. Code, §§ 6253, subd. (d), 6255, subd. (b).
37 Gov. Code, § 6255, subd. (b).
38 Gov. Code, § 6254.5; 86 Ops.Cal.Atty.Gen. 132 (2003).
39 Gov. Code, § 6254.5.

40 Gov. Code, § 6252, subd. (e); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; 71 Ops.Cal.Atty.Gen. 235 (1988).
41 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
42 Gov. Code, § 6253, subd. (b); 88 Ops.Cal.Atty.Gen. 153 (2005); 89 Ops.Cal.Atty.Gen. 39 (2006).
43 Gov. Code, § 6253, subd. (d).
44 Gov. Code, § 6253, subd (d).
45 Gov. Code, § 6253, subd. (b).
46 Gov. Code, § 6253, subd. (b); 85 Ops.Cal.Atty.Gen. 225 (2002); see, e.g., Gov. Code, § 81008.
47 *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144.
48 Gov. Code, § 6253, subd. (b).
49 Gov. Code, § 6253, subd. (e); *North County Parents Organization v. Dept. of Education* (1994) 23 Cal.App.4th 144.

CHAPTER 4:
EXEMPTIONS

OVERVIEW OF EXEMPTIONS

SPECIFIC EXEMPTIONS

- Architectural and Official Building Plans
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- Personal Contact Information
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- Recipients of Public Services
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PUBLIC INTEREST EXEMPTION

EFFECT OF PROPOSITION 59 ON EXEMPTIONS

CHAPTER 4:
EXEMPTIONS

OVERVIEW OF EXEMPTIONS

The underlying purpose of the Act is to assure broad access to public records. Any grounds for denying access to public records must be found in the enumerated exemptions of the Act.[1] The Act's general policy of disclosure can only be accomplished if the exemptions are narrowly construed. As a result, courts—both as a matter of statutory interpretation and now by constitutional mandate—construe exemptions under the Act narrowly.[2]

This means that in responding to a record request, the local agency must allow access to the record unless it can identify an exemption within the Act that would justify nondisclosure of the information. Moreover, in circumstances where a record may contain some information that is subject to an exemption and other information that is not, the local agency must produce the record, but may redact the information that is exempt.

As discussed below, many of the exemptions are very specific and pertain to particular types of public records such as certain personnel, police, or medical records. Two exemptions, however, have a broader scope and may apply even if a record does not fall within any other exemption contained in the Act. First, the Act exempts records that are otherwise exempt from disclosure under other statutes.[3] Second, the Act's "public interest" or "catchall" provision allows nondisclosure where the local agency demonstrates on the facts of a particular case that the public interest in nondisclosure clearly outweighs the public interest in disclosure.[4]

Practice Tip:

When evaluating a record for purposes of determining whether it falls within any exemption under the Act, a local agency should always bear in mind that it might also be subject to nondisclosure under other statutes such as the Evidence Code or Penal Code.[5]

■ SPECIFIC EXEMPTIONS

Architectural and Official Building Plans

Certain of the materials submitted by third parties to local agencies may qualify for federal copyright protection.[6] In addition, local agencies may claim a copyright in many of their own records.

The Act exempts records, "the disclosure of which is exempted or prohibited pursuant to federal or state law…."[7] Federal copyright law defines "architectural work" as the "design of a building as embodied in any tangible medium of expression, including building, architectural plans, or drawings."[8] The law includes architectural plans as "original works of authorship" which have an automatic federal copyright protection.[9] Architectural plans are therefore protected under the federal copyright law and may be inspected, but cannot be copied without the permission of the owner. "Fair use of copyrighted materials" does not require disclosure or the right to copy architectural plans. The Fair Use rule is a defense to a copyright infringement action; it is not proper to use the Fair Use rule offensively in order to obtain copyrighted materials.[10]

State law addresses inspection and duplication of building plans and authorizes inspection of the plans by the public.[11] The official copy of building plans maintained by a local agency's building department may be inspected, but may not be copied without first requesting the written permission of the licensed or registered professional who signed the document and the original or current property owner. A request for written permission from the professional must be accompanied by a statutorily prescribed affidavit signed by the person requesting to make copies, attesting that the copy of the plans shall only be used for the maintenance, operation and use of the building, that the drawings are instruments of professional service and are incomplete without the interpretation of the certified, licensed or registered professional of record, and that a licensed architect who signs and stamps plans, specifications, reports, or documents shall not be responsible for damage caused by subsequent unauthorized changes to or uses of those plans.[12] After receiving this required information, the professional cannot unreasonably withhold written permission to make copies of the plans.[13]

Additionally, the California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports are public records.[14]

Practice Tip:

These statutory requirements do not prohibit duplication of reduced copies of plans that have been distributed to local agency decision-making bodies as part of the agenda materials for a public meeting.

Attorney Client Communications and Attorney Work Product

The Act specifically exempts from disclosure "records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege."[15] The Act's exemptions protect attorney client privileged communications and attorney work product, as well as, more broadly, other work product prepared for use in pending litigation or claims.[16]

Even after litigation is concluded, an attorney's billing entries remain exempt from disclosure under the attorney client privilege or attorney work product doctrine insofar as they describe an attorney's impressions, conclusions, opinions, legal research or strategy.[17] Similarly, retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney client privilege.[18] A local agency may waive the privilege and elect to produce the agreements.[19] Only the local agency's governing board may waive the privilege.[20]

Code Enforcement Records

Local agencies may pursue code enforcement through administrative or criminal proceedings, or a combination of both. Records of code enforcement cases for which criminal sanctions are sought may be subject to the same disclosure rules as police and other law enforcement records, including the rules for investigatory records and files, as long as there is a concrete and definite prospect of criminal enforcement.[21] Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.[22] However, some administrative code enforcement information, such as names and contact information of complainants, may be exempt from disclosure under the official information privilege, the identity of informant privilege, or the public interest exemption.[23]

Drafts

The Act exempts from disclosure "[p]reliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, if the public interest in withholding those records clearly outweighs the public interest in disclosure."[24] The purpose of the "drafts" exemption is to provide a measure of privacy for writings concerning pending agency action. The exemption was adapted from the federal Freedom of Information Act ("FOIA"), which exempts from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."[25] The California Supreme Court has observed that the FOIA "memorandums" exemption is based on the policy of protecting the decision making processes of government agencies, and in particular the frank discussion of legal or policy matters that might be inhibited if subjected to public scrutiny.[26]

Practice Tip:

By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the drafts are not maintained by the local agency in the ordinary course of business, and the public interest in nondisclosure clearly outweighs the public interest in disclosure.

The courts have held that the "drafts" exemption in the Act has essentially the same purpose as the "memorandums" exemption in the FOIA, and that the "drafts" exemption protects deliberative materials produced in the process of making agency decisions, but not factual materials.[27] Some courts have distinguished between pre-decisional advisory opinions, recommendations and policy deliberations, which are exempt, and memoranda of factual material or purely factual material contained in and severable from deliberative memoranda.[28] However, in discussing the closely-related deliberative process privilege, which is also based on the FOIA "memorandums" exemption, the California Supreme Court has observed that the fact/opinion distinction may be misleading because even purely factual material may expose the deliberative process. According to the California Supreme Court, the key question under the FOIA "memorandums" exemption is whether the disclosure of materials would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.[29]

To qualify for the "drafts" exemption:

- the record must be a preliminary draft, note, or memorandum;
- that is not retained by the local agency in the ordinary course of business; and
- the public interest in withholding the record must clearly outweigh the public interest in disclosure.[30]

The courts have observed that preliminary materials that are not customarily discarded or that have not in fact been discarded pursuant to policy or custom must be disclosed.[31] What distinguishes the "drafts" exemption from the deliberative process privilege is a focus on whether the records containing deliberative information are normally retained by the local agency. If the records are normally retained, they do not qualify for the exemption. This is in keeping with the purpose of the FOIA "memorandums" exemption of prohibiting the "secret law" that would result from confidential memos retained by local agencies to guide their decision-making.

Election Information

Voter Registration Information

Voter registration information, including the home street address, telephone number, email address, precinct number, or other number given by the Secretary of State, is confidential and cannot be disclosed except as specified in the Elections Code. Similarly, the signature of the voter shown on the voter registration card is confidential and shall not be disclosed to any person, except as provided in the Elections Code.[32] Voter registration information may be provided to any candidate for federal, state, or local office; any committee for or against an initiative or referendum measure for which legal publication is made; and to any person for election, scholarly, journalistic or political purposes, or for governmental purposes as determined by the Secretary of State.[33]

Identifying information contained in voter registration records including a California Driver's License, California ID card, or other unique identifier used by the State of California is confidential and shall not be disclosed to any person (including those entitled to voter registration information).[34]

When a person's vote is challenged, the voter's home address or signature may be released to the challenger, elections officials, and other persons as necessary to make, defend or adjudicate a challenge.[35]

The elections official shall permit a person to view the signature of a voter for the purpose of determining whether the signature matches a signature on an affidavit of registration or a petition. The signature cannot be copied.[36]

Information or data compiled by public officers or employees that reveals the identity of persons who have requested bilingual ballots or ballot pamphlets is not a public record and shall not be provided to any person other than those public officers or employees who are responsible for receiving and processing those requests.[37]

Initiative, Recall, and Referendum Petitions

Any petition to which a voter has affixed his or her signature for a statewide, county, city, and/or district initiative, referendum, recall or matters submitted under the Education Code is not a public record and is not open to inspection except by the public officers and/or employees whose duty it is to receive, examine or preserve the petitions. This prohibition extends to all memoranda prepared by county elections officials in the examination of the petitions indicating which voters have signed particular petitions.[38]

If a petition is found to be insufficient, the proponents and their representatives may inspect the memoranda of insufficiency to determine which signatures were disqualified and the reasons for the disqualification.[39]

Identity of Informants

A local agency has a privilege to refuse to disclose and to prevent another from disclosing the identity of a person who has furnished information in confidence to a law enforcement officer or representative of a local agency charged with administration or enforcement of a law. This privilege applies where the information purports to disclose a violation of a law of the United States, the State of California or another public entity, and where the disclosure is forbidden by state or federal law. It also applies where the disclosure of the identity of the informant is against the public interest because there is a necessity for

preserving the confidentiality of the informant's identity that outweighs the necessity for disclosure in the interest of justice.[40] This privilege extends to disclosure of the contents of the informant's communication if the disclosure would tend to disclose the identity of the informant.[41]

Law Enforcement Records

Overview

Law enforcement records are generally exempt from disclosure except for certain specific types of information that must be disclosed.[42] The actual investigation files and records are themselves exempt from disclosure, but the Act requires the local agency to disclose certain information derived from them.[43]

The type of information that must be disclosed differs depending upon whether it relates to, for example, calls to the police department for assistance, the identity of an arrestee, information relating to a traffic accident, or certain types of crimes, including, for example, car theft, burglary, or arson. The identities of victims of certain types of crimes, including minors and victims of sexual assault, are required to be withheld if requested by the victim, or the victim's guardian if the victim is a minor.[44] Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.[45] Certain information that may be required to be released may be withheld where the disclosure would endanger a witness or interfere with the successful completion of the investigation. The disclosure exemption extends indefinitely, even after the investigation is closed.[46]

Release practices vary by local agency. Some local agencies provide a written summary of information being disclosed, some release only specific information upon request, while others release reports with certain matters redacted. Other local agencies release reports upon request with no redactions except as mandated by statute. Some local agencies also release 911 tapes[47] and booking photos, although this is not required under the Act.[48]

If it is your local agency's policy to release police reports upon request, it is helpful to establish an internal process to control the release of the identity of minors or victims of certain types of crimes; or to ensure that releasing the report would not endanger the safety of a person involved in an investigation or endanger the completion of the investigation.

Practice Tip:

Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

Exempt Records

The Act generally exempts most law enforcement records from disclosure, including:

- Complaints to or investigations conducted by a local or state police agency
- Records of intelligence information or security procedures of a local or state police agency
- Any investigatory or security files compiled by any other local or state police agency
- Customer lists provided to a local police agency by an alarm or security company
- Any investigatory or security files compiled by any state or local agency for correctional, law enforcement or licensing purposes.[49]

Information that Must be Disclosed

There are three general categories of information contained in law enforcement investigatory files that must be disclosed: information that must be disclosed to victims, their authorized representatives and insurance carriers; information relating to arrestees; and information relating to complaints or requests for assistance.

Disclosure to Victims, Authorized Representatives, Insurance Carriers:

Except where disclosure would endanger the successful completion of an investigation, or a related investigation, or endanger the safety of a witness, certain information relating to specific listed crimes must be disclosed upon request to:

- A victim
- The victim's authorized representative
- An insurance carrier against which a claim has been or might be made
- Any person suffering bodily injury, or property damage or loss.

The type of crimes listed to which this requirement applies include arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime defined by statute.[50]

The type of information that must be disclosed (except where it endangers safety of witnesses or the investigation itself) includes:

- Name and address of persons involved in or witnesses to incident (other than confidential informants)
- Description of property involved
- Date, time and location of incident
- All diagrams; statements of the parties to the incident
- Statements of all witnesses (other than confidential informants).[51]

Information Regarding Arrestees

The Act mandates that the following information be released pertaining to every individual arrested by the local law enforcement agency except where releasing the information would endanger the safety of persons involved in an investigation or endanger the successful completion of the investigation or a related investigation:

- Full name and occupation of the arrestee
- Physical description including date of birth, color of eyes and hair, sex, height and weight
- Time, date and location of arrest
- Time and date of booking
- Factual circumstances surrounding arrest
- Amount of bail set
- Time and manner of release or location where arrestee is being held
- All charges, including outstanding warrants, parole or probation holds, that the arrestee is being held on.[53]

Complaints or Requests for Assistance

The Act provides that the following information must be disclosed relative to complaints or requests for assistance received by the law enforcement agency — subject to the restrictions imposed by the Penal Code:

- Time and nature of the response
- To the extent the crime alleged or committed or any other incident is recorded, the time, date and location of occurrence, and the time and date of report
- Factual circumstances surrounding crime/incident

Practice Tip:

The release of traffic accident information is covered under the Vehicle Code, which requires the law enforcement agency to disclose the entire contents of a traffic accident report to persons who have a "proper interest" in the information, including the driver or authorized representative, guardian, conservator or parent of a minor driver, injured person, owners of vehicles or property damaged by the accident, persons who may be liable for breach of warranty and an attorney who declares under penalty of perjury that he or she represents any such person.[52]

Practice Tip:

Most police departments have some form of daily desk or press log that contains all or most of arrestee information. The Act does not require a local agency to grant a single requester to be given access on a subscription basis to records that may be created in the future. It applies only to records existing at the time of the request.[54] Further, there is no obligation to provide the information in the format requested if that is not the format used by the local agency to store the information or to create copies for its own use.[55]

- General description of injuries, property or weapons involved
- Names and ages of victims shall be disclosed, except the names of victims of certain listed crimes may be withheld upon request of victim or parent of minor victim. These listed crimes include various Penal Code sections which relate to topics such as sexual abuse, child abuse, hate crimes and stalking.[56]

The Penal Code provides that except as required by criminal discovery provisions, no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim of or witness to the alleged offense.[57]

Requests for Journalistic or Scholarly Purposes

Where a request states, under penalty of perjury, that it is made for a scholarly, journalistic, political or governmental purpose, or for an investigative purpose by a licensed private investigator, and that it will not be used directly or indirectly or furnished to another to sell a product or service to any individual or group of individuals, the Act requires the disclosure of the name and address of every individual arrested by the local agency and the current address of the victim of a crime, except for specified crimes.[58] Any address information furnished pursuant to this authorization may not be used directly or indirectly, or furnished to another to sell a product or service and is subject to statutory restrictions that preclude the furnishing of this information to an arrested person or a defendant in a criminal action.[59]

Practice Tip:

Law enforcement information such as complaint or incident information that may otherwise be subject to disclosure is confidential to the extent it includes reports of suspected child or elder abuse or neglect, or information contained in reports of suspected abuse or neglect. To avoid potential criminal liability, local agencies should only disclose reports of suspected child or elder abuse or neglect or information contained in such reports as permitted by state law.

Mental Health Detention Information

All information and records obtained in the course of providing services to a mentally disordered individual who is gravely disabled and/or a danger to others or himself, and who is detained (often referred to as a "detainee") and taken into custody by a peace officer, are confidential and may only be disclosed to enumerated recipients and for purposes specified in state law.[60] Willful, knowing release of confidential mental health detention information can create liability for civil damages.[61]

Elder Abuse Records

Reports of suspected abuse or neglect of an elder or dependent adult, and information contained in such reports, are confidential and may only be disclosed as permitted by state law.[62] The prohibition against unauthorized disclosure applies regardless of whether a report of suspected elder abuse or neglect is from someone who is a "mandated reporter" (any person that has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not for compensation) or from someone else.[63] Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.[64]

Juvenile Records

Police and Court Records

Records or information gathered by law enforcement agencies relating to the detention of or taking a minor into custody or temporary custody are confidential and subject to release only in certain circumstances and by certain specified persons and entities.[65] Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.[66]

Practice Tip:

Some local courts have their own rules regarding inspection of juvenile records, which may differ from county to county and may change from time to time. Care should be taken to periodically review the rules as the presiding judge of each juvenile court makes their own rules.

Different provisions apply to dissemination of information gathered by a law enforcement agency relating to the taking of a minor into custody where it is provided to another law enforcement agency, including a school district police or security department or other agency or person who has a legitimate need for information for purposes of official disposition of a case.[67] A law enforcement agency shall release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.[68]

Child Abuse Reports

Reports of suspected child abuse or neglect, including reports from those who are "mandated reporters" (for example, teachers and public school employees and officials, physicians, children's organizations, community care facilities, etc.), and child abuse and neglect investigative reports that result in a summary report being filed with the Department of Justice are confidential and may only be disclosed to the persons and agencies listed in state law.[69] Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.[70]

Library Circulation Records

Library circulation records that are kept to identify the borrowers, and library and museum materials presented solely for reference or exhibition purposes, are exempt from disclosure.[71] Further, all registration and circulation records of any library that is in whole or in part supported by public funds are confidential. Such records remain confidential and shall not be disclosed except to persons acting within the scope of their duties within the administration of the library, pursuant to written authorization by the individual to whom the records pertain, or by superior court order.[72] The confidentiality of library circulation records does not extend to statistical reports of registration and circulation, or to records of fines collected by the library.[73]

Licensee Financial Information

When a local agency requires that applicants for licenses, certificates or permits submit personal financial data, that information is exempt from disclosure.[74] One frequent example of this is the submittal of sales or income information under a business license tax requirement. However, this exemption does not apply to financial information filed by an existing licensee or franchisee to justify a rate increase, presumably because those affected by the increase have a right to know its basis.[75]

Medical Privacy Laws

State and federal medical privacy laws that may apply to records of local agencies include the physician/patient privilege, the Confidentiality of Medical Information Act, and the Health Insurance Portability and Accountability Act.[76] The exemptions from and prohibitions against disclosure contained in these laws are incorporated into the Act.[77]

Local agencies that receive or maintain individually identifiable health information may comply with the requirements of the physician/patient privilege, the Confidentiality of Medical Information Act, and the Health Insurance Portability and Accountability Act by citing appropriate sections of the Act, as well as applicable medical privacy laws and regulations, in declining to disclose protected, individually identifiable health information.[78]

Physician/Patient Privilege

State law gives patients a privilege to refuse to disclose, and to prevent others from disclosing, confidential communications between patients and their physicians.[79] The privilege extends to confidential patient/physician communications that are disclosed to third parties where reasonably necessary to accomplish the purpose for which the physician was consulted.[80] Patient information in the possession of a local agency may be subject to the privilege.

Confidentiality of Medical Information Act

State law prohibits providers of health care, health care service plans and contractors, as these terms are defined in the law, from disclosing individually identifiable medical information of a patient, enrollee or subscriber without first obtaining authorization, subject to certain exceptions.[81] State law also obligates employers to establish appropriate procedures to ensure the confidentiality of individually identifiable medical information, and prohibits employers from disclosing or permitting the disclosure or use of individually identifiable medical information without first obtaining authorization, subject to certain exceptions.[82] Local agencies that are not providers of health care, health care service plans or contractors as defined in state law may possess individually identifiable medical information protected under state law that originated with providers of health care, health care service plans or contractors.[83]

Practice Tip:

Patient medical information provided to local agency emergency medical personnel to assist in providing emergency medical care may be subject to the physician/patient privilege if providing the privileged information is reasonably necessary to accomplish the purpose for which the physician was consulted.

Local agencies are also obligated as employers to protect individually identifiable medical information protected under state law. Patients whose individually identifiable medical information is used or disclosed in violation of the state law may recover compensatory damages, limited punitive damages, limited attorneys' fees and their litigation costs.[84] Violations of state law that result in economic loss or personal injury of patients are subject to criminal penalties, and damages are available for negligent release of protected records.[85] Persons and entities that negligently disclose records protected under state law may be liable for administrative fines or civil penalties.[86] Knowingly and willfully obtaining, using, or disclosing information protected under state law is subject to substantial administrative fines or civil penalties.[87]

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act in 1996 to improve portability and continuity of health insurance coverage and to combat waste, fraud and abuse in health insurance and health care delivery through the development of a health information system and establishment of standards and requirements for the electronic transmission of certain health information.[88] The Secretary of the U.S. Department of Health and Human Services has issued privacy regulations governing use and disclosure of individually identifiable health information.[89] Persons that knowingly and in violation of federal law use or cause to be used a unique health identifier, obtain individually identifiable health information relating to an individual, or disclose individually identifiable health information to another person are subject to substantial fines and imprisonment of not more than one year, or both, and to increased fines and imprisonment for violations under false pretenses or with the intent to use individually identifiable health information for commercial advantage, personal gain, or malicious harm.[90] Federal law also permits the Health and Human Services Secretary to impose civil penalties.[91]

Workers' Compensation Benefits

A local agency may not release records pertaining to the workers' compensation benefits for an individually identified employee because they are exempt from disclosure as "personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy."[92] The Act further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.[93]

In addition, state law prohibits a person or public or private entity who is not a party to a claim for workers' compensation benefits from obtaining individually identifiable information obtained or maintained by the Division of Workers' Compensation on that claim.[94] "[I]ndividually identifiable information" means "any

data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."[95] If a public records request falls within this broad definition as a request for "data concerning an injury or claim" that is linked to a local agency employee or other uniquely identifiable individual, then the record(s) may not be disclosed.

Once an application for adjudication has been filed, certain information may be subject to disclosure;[96] however, some of the personal information may still be protected under the Act.[97] Requests for such information after adjudication must identify the requester and state the reason for the request. If the purpose of such a request is related to pre-employment screening, the administrative director must notify the person about whom the information is requested and include a warning about discrimination against persons who have filed claims for workers' compensation benefits. Further, a residence address shall not be disclosed except to law enforcement agencies, the district attorney, other governmental agencies or for journalistic purposes. Individually identifiable information is not subject to subpoena in a civil proceeding without notice and a hearing at which the court is required to balance the respective interests—privacy and public disclosure. Individually identifiable information may be used for certain types of statistical research by specifically listed persons and entities.[98]

Official Information Privilege

A local agency has a privilege to refuse to disclose official information.[99] "Official Information" includes:

- Information that is protected by a state or federal statutory privilege or; and
- Information, the disclosure of which is against the public interest, due to necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.[100]

The local agency has the right to assert the privilege both to refuse to disclose and to prevent another from disclosing official information.[101] Where the disclosure is prohibited by state or federal statute, the privilege is absolute. In all other respects, it is conditional and requires a judge to weigh the necessity for preserving the confidentiality of information against the necessity for disclosure in the interest of justice. (This is similar to the weighing process provided for in the Act—allowing nondisclosure when the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.)[102] This is typically done through confidential judicial review.[103] As part of the weighing process a court will look at the consequences to the public, including the effect of the disclosure on the integrity of public processes and procedures.[104]

There are a number of cases arising out of this statute.[105] While many of the cases interpreting this privilege involve law enforcement records, other cases arise out of licensing and accreditation-type activities. The courts address these types of cases on an individualized basis and further legal research should be done within the context of particular facts. The statute defines "official information" as "information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made."[106] However, the courts have somewhat expanded on the statutory definition by determining that certain types of information, such as police investigative files and medical information, are "by [their] nature confidential and widely treated as such" and thus protected from disclosure by the privilege.[107] Although there is no case law directly on point, this privilege, along with the informant privilege, may be asserted to protect the identities of code enforcement complainants and whistleblowers.

Pending Litigation or Claims

The Act exempts from disclosure "(r)ecords pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to [the California Government Claims Act] until the pending litigation or claim has been finally adjudicated or otherwise settled."[108] Although the phrase "pertaining to" pending litigation or claims might seem broad, the courts nevertheless have construed the exemption narrowly, consistent with the underlying policy of the Act to promote access to public records. The exemption applies only to documents specifically prepared by, or at the direction of, the local agency for use in litigation. This includes records prepared not simply for an ongoing case, but those specifically prepared in anticipation of a future lawsuit, such as an incident report.[109]

It may sometimes be difficult to determine whether a particular record was prepared specifically for use in litigation or for other purposes related to the underlying incident. For example, an incident report may be prepared either in anticipation of defending a potential claim, or simply for risk management purposes. In order for the exemption to apply in those circumstances, the local agency would have to prove that the dominant purpose of the record was to be used in defense of litigation.[110]

It is important to remember that even members of the public that have sued a local agency are entitled to use the Act to obtain documents that may be relevant to the litigation, so long as the documents were not specifically prepared by the local agency for use in anticipated or pending litigation, and do not fall within some other exemption under the Act or other statute. The mere fact that the litigant might also be able to obtain the documents in discovery is not a ground for rejecting the request under the Act.[111]

The pending litigation exemption does not prevent members of the public from obtaining records submitted to the local entity by litigants, such as a claim for monetary damages filed prior to a lawsuit. This is because the document has been prepared by the litigant and not by the local agency.[112]

Once litigation has concluded and is no longer "pending," records previously shielded from disclosure by the exemption must be produced, unless covered by another exemption or statutory privilege. The public may therefore obtain copies of depositions from closed cases.[113] Documents concerning settlement of a claim, whether prepared by a litigant or the local agency, such as medical records, payment warrants, minutes of a claims settlement committee meeting, or investigative reports, must be produced unless shielded from disclosure by other exemptions of the Act or other statutes.[114]

Practice Tip:

In responding to a request for documents concerning settlement of a particular matter, it is critical to pay close attention to potential application of other exemptions under the Act or other statutory privileges. It is recommended that you seek the advice of your local agency counsel.

While medical records are subject to a constitutional right of privacy, and generally exempt from production under the Act and other statutes,[115] the litigant may be deemed to have waived the right to confidentiality by submitting them to the public entity in order to obtain a settlement.[116] Similarly, investigative reports in claims involving law enforcement activity may fall within specific exemptions for law enforcement reports[117] or reports prepared in anticipation of litigation may fall within the attorney client privilege.[118] Particular records or information relevant to settlement of a closed case may also be subject to nondisclosure under the public interest exemption to the extent the local agency can show that the public interest in nondisclosure clearly outweighs the public interest in disclosure.[119]

There is considerable overlap between the pending litigation exemption and both the attorney client privilege[120] and attorney work product protection.[121] However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney client privilege or work product protection.[122] Moreover, while the exemption for pending litigation expires once the litigation is no longer pending, the attorney client privilege and work product protection are ongoing.[123]

The attorney client privilege may come into play simultaneously with specific exemptions under the Act or other statutory privileges that could require a court to undertake confidential inspection of documents in order to determine application of the exemptions. The Act specifically references an Evidence Code provision that provides a court may not review privileged attorney client communications in camera for purposes of determining whether the privilege is established.[124] Thus, in a writ of mandate proceeding a local agency may have to submit other documents for inspection to allow the court to determine whether a particular exemption applies, such as evaluating whether the public interest in nondisclosure clearly outweighs the public interest in disclosure under the public interest exemption. But the court cannot conduct an in camera review of documents that the local agency contends are subject to the attorney client privilege.

Practice Tip:

It is important to separate potential attorney client communications from other records and make certain that privileged attorney client communications are not unintentionally submitted to the court for inspection.

Personal Contact Information

Court decisions have ruled that individuals have a substantial privacy interest in their personal contact information. However, a fact-specific analysis must be conducted to determine whether the public interest exemption protects this information from disclosure, that is, whether the public interest in nondisclosure clearly outweighs the public interest in disclosure.[125] Application of this balancing test has yielded varying results, depending on the circumstances of the case.

For example, courts have allowed nondisclosure of the names, addresses and telephone numbers of airport noise complainants.[126] In that instance, the anticipated chilling effect on future citizen complaints weighed heavily in the court's decision.

In other situations, courts have ordered disclosure of personal information contained in applications for licenses to carry concealed weapons,[127] the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,[128] and the names of donors to a university-affiliated foundation, even though those donors had requested anonymity.[129]

Posting Personal Information of Elected/Appointed Officials on the Internet

The Act prohibits a state or local agency from posting on the Internet the home address or telephone number of any elected or appointed officials without first obtaining their written permission.[130] This section also prohibits someone from knowingly posting on the Internet the home address or telephone number of any elected or appointed official or the official's "residing spouse" or child, and either threatening or intending to cause imminent great bodily harm. It also prohibits a person, business or association from publicly posting or displaying on the Internet the home address or telephone number of any elected or appointed official where the official has made a written demand not to disclose his address or phone number. If an official makes such a written demand, it must include a statement describing a threat or fear for the safety of the official or any person residing at the official's home address. The written demand is effective for four years, regardless of the length of the official's term of office. Remedies include injunctive or declarative relief, misdemeanor or felony prosecution, and treble damages of not less than $4,000.[131]

Practice Tip:

In situations where personal contact information clearly cannot be kept confidential, inform the affected members of the public that their personal contact information is subject to disclosure pursuant to the Act.

Personnel Records

"Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" are exempt from disclosure.[132] The express policy declaration at the beginning of the Act "bespeaks legislative concern for individual privacy as well as disclosure."[133] Courts have continued to recognize that public employees have a constitutionally protected interest in their personnel files; however, recent decisions from the California Supreme Court have determined that public employees do not have a reasonable expectation of privacy in their names and salary information and their dates of employment. This interpretation also applies to police officers absent unique, individual circumstances.[134]

In addition, the public interest exemption may protect certain personnel records from disclosure.[135] In determining whether to allow access to personnel files, the courts have determined that the tests are essentially the same. The extent of the employee's privacy interest in certain information and the harm from its unwarranted disclosure is weighed against the public interest in disclosure. The public interest in disclosure will be considered in the context of the extent to which the disclosure of the information will shed light on the local agency's performance of its duties.[136]

Concerning allegations of non-law enforcement public employee misconduct, courts have upheld the public interest against disclosure of "trivial or groundless charges." When "the charges are found true, or discipline is imposed," the public interest favors disclosure. In addition, "where there is reasonable cause to believe the complaint to be well founded, the right of public access to related public records exists."[137]

Practice Tip:

California courts continue to look for guidance to provisions of the Federal Freedom of Information Act (FOIA), on which the Act was modeled, as well as federal cases interpreting the FOIA relative to personnel records.[138]

Peace Officer Personnel Records

Peace officer personnel records fall within the category of records, "the disclosure of which is exempted or prohibited pursuant to federal or state law...." These records are confidential and privileged.[139]

The discovery and disclosure of the personnel records of peace officers are governed exclusively by statutory provisions contained in the Evidence Code and Penal Code. Peace officer personnel records and records of citizen complaints ". . . or information obtained from these records . . ." are confidential and "shall not" be disclosed in any criminal or civil proceeding except by discovery pursuant to statutorily prescribed procedures.[140]

Practice Tip:

The appropriate procedure for obtaining information in protected peace officer personnel files is to file a motion commonly known as a "Pitchess" motion, which by statute entails a two-part process involving first a determination by the court regarding good cause for disclosure and materiality of the information sought, and a subsequent confidential review by the court of the files, where warranted.[145]

Peace officer "personnel records" include personal data, medical history, appraisals and discipline, complaints and investigations relating to events perceived by the officer or relating to the manner in which his or her duties were performed, and any other information the disclosure of which would constitute an unwarranted invasion of privacy.[141] The names, salary information and employment dates and departments of peace officers have been determined to be disclosable records.[142]

While the Penal and Evidence Code privileges are not per se applicable in federal court, federal common law recognizes a qualified privilege for "official information" and considers government personnel files to be "official information."[143] Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.[144]

Employment Contracts and Employee Salaries

Every employment contract between a state or local agency and any public official or public employee is a public record that is not exempt under either the personnel or public interest exemption.[146] Thus, for example, one court has held that two letters in a city firefighter's personnel file were part of his employment contract and could not be withheld under either the employee's right to privacy in his personnel file or the public interest exemption.[147]

With or without an employment contract, the names and salaries (including performance bonuses and overtime) of public employees, including peace officers, are subject to disclosure under the Act.[148] Public employees do not have a reasonable expectation that their salaries will remain a private matter. In addition, there is a strong public interest in knowing how the government spends its money. Therefore, absent unusual circumstances, the names and salaries of public employees are not subject to either the personnel exemption or the public interest exemption. Similarly, peace officer salary information is not exempted from disclosure under the Act. Thus, absent unique, individual circumstances such as where a peace officer's anonymity is essential to his or her safety, the names and salaries of peace officers are subject to disclosure under the Act.[149]

Contractor Payroll Records

State law establishes requirements for maintaining and disclosing certified payroll records for workers employed on public works projects subject to payment of prevailing wages.[150] State law requires contractors to make certified copies of payroll records available to employees and their representatives, representatives of the awarding body, the Department of Industrial Relations, and the public.[151] Requests are to be made through the awarding agency or the Department of Industrial Relations, and the requesting party is required to reimburse the cost of preparation to the contractor, subcontractors, and the agency through which the request is made prior to being provided the records.[152] Contractors are required to file certified copies of the requested records with the requesting entity within ten days of receipt of a written request.[153]

However, state law also limits access to contractor payroll records. Employee names, addresses and social security numbers must be redacted from certified payroll copies provided to the public or any local agency by the awarding body or the Department of Industrial Relations.[154] Only the name and social security number are to be redacted from certified payroll copies provided to joint labor-management committees established pursuant to the federal Labor Management Cooperation Act of 1978.[155] The name and address of the contractor or subcontractor may not be redacted.[156]

The Director of the Department of Industrial Relations has adopted regulations governing release of certified payroll records and applicable fees.[157] Such regulations require that requests for certified payroll records be in writing and contain certain specified information regarding the awarding body, the contract and the contractor; require awarding agency acknowledgement of requests; specify required contents of awarding agency requests to contractors for payroll records; and set fees to be paid in advance by persons seeking payroll records.[158]

Test Questions and Other Examination Data

The Act exempts from disclosure test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided in the portions of the Education Code that relate to standardized tests.[159] Thus, for example, a local agency is not required to disclose the test questions it uses for its employment examinations. State law provides that standardized test subjects may, within 90 days of the release of test results to the test subject, have limited access to test questions and answers upon request to the test sponsor.[160] This limited access may be either through an in-person examination or by release of certain information to the test subject.[161] The Education Code also requires that test sponsors prepare and submit certain reports regarding standardized tests and test results to the California Postsecondary Education Commission.[162] All such reports and information submitted to the Commission are public records subject to disclosure under the Act.[163]

Public Contracting Documents

Final contracts with local agencies are generally disclosable public records due to the public's right to determine whether public resources are being spent for the benefit of the community as a whole or the benefit of only a limited few.[164] When the bids or proposals leading up to those final contracts become disclosable depends largely upon the types of contracts involved.

For example, local agency contracts for construction of public works, and procurement of goods and non-professional services are typically awarded to the lowest responsive, responsible bidder through a competitive bidding process.[165] Bids for these contracts are usually submitted to local agencies under seal

and then publicly opened at a designated time and place. These bids are public records and disclosable as soon as they are opened.

Other local agency contracts for acquisition of professional services or disposition of property are awarded to the successful proposer through a competitive proposal process. As part of this process, interested parties submit proposals that are evaluated by the local agency and are used to negotiate with the winning proposer.

Practice Tip:

Local agencies should clearly advise bidders and proposers in their Requests for Bids and Requests for Proposals what bid and proposal documents will be disclosable public records and when they will be disclosable to the public.

While the public has a strong interest in scrutinizing the process leading to the selection of the winning proposer, the local agency's interest in keeping these proposals confidential frequently outweighs the public's interest in disclosure until negotiations with the winning proposer are complete.[166] If a winning proposer has access to the specific details of other competing proposals, then the local agency is greatly impaired in its ability to secure the best possible deal on its constituents' behalf.

Some local agencies pre-qualify prospective bidders through a request for qualifications process. The pre-qualification packages submitted, including questionnaire answers and financial statements, are exempt public records and are not open to public inspection.[167] Nevertheless, documents containing the names of contractors applying for pre-qualification status are public records and must be disclosed. In addition, the contents of pre-qualification packages may be disclosed to third parties during the verification process, in an investigation of substantial allegations or at an appeal hearing.

Real Estate Appraisals and Engineering Evaluations

The Act requires the disclosure of the contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or a local agency relative to the acquisition of property, or to prospective public supply and construction contracts, but only when all of the property has been acquired or when all of the contract agreement obtained.[168] By its plain terms, this exemption only applies while the acquisition or prospective contract is pending. Once all the property is acquired or all of the contract agreement obtained, the exemption will not apply. In addition, this exemption is not intended to supersede the law of eminent domain.[169] Thus, for example, this exemption would not apply to appraisals of owner-occupied residential property of four units or less, where disclosure of such appraisals is required by the Eminent Domain Law or related laws such as the California Relocation Assistance Act.[170]

Recipients of Public Services

Disclosure of information regarding food stamp recipients is prohibited.[171] Subject to certain exceptions, disclosure of confidential information pertaining to applicants for or recipients of public social services for any purpose unconnected with the administration of the welfare department also is prohibited.[172] This latter prohibition does not create a privilege.[173]

Housing Authority Tenants

Leases and lists or rosters of tenants of the Housing Authority are confidential and shall not be open to inspection by the public, but shall be supplied to the respective governing body on request.[174] A Housing Authority has a duty to make available public documents and records of the Authority for inspection, except any applications for eligibility and occupancy that are submitted by prospective or current tenants of the Authority.[175]

The Act exempts from disclosure records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information in accordance with section 18081 of the Health and Safety Code.[176]

Taxpayer Information

Where information that is required from any taxpayer in connection with the collection of local taxes is received in confidence and where the disclosure of that information would result in an unfair competitive disadvantage to the person supplying the information, the information is exempt from disclosure.[177] Sales and use tax records may be used only for tax administration. Unauthorized disclosure or use of confidential information contained in these records can give rise to criminal liability.[178]

Trade Secrets and Other Proprietary Information

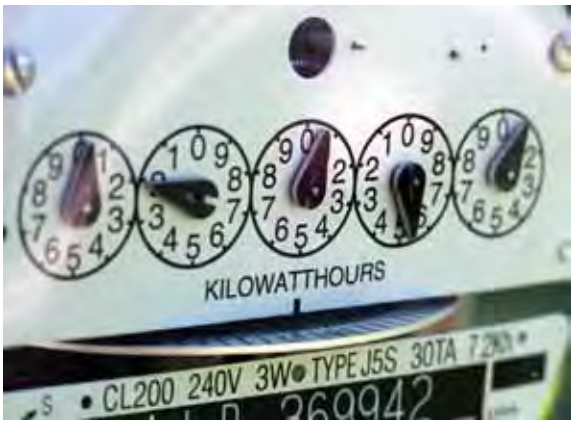
As part of the award and administration of public contracts, businesses will often give local agencies information that the businesses would normally consider to be proprietary. There are three exemptions that businesses often use to attempt to protect this proprietary information – the official information privilege, the trade secret privilege, and the public interest exemption.[179]

However, California's strong public policy in favor of disclosure of public records precludes local agencies from protecting most business information. Both the official information privilege and the public interest exemption require that the public interest in nondisclosure clearly outweighs the public interest in disclosure. While these provisions were designed to protect legitimate privacy interests, California courts have consistently held that when individuals or businesses voluntarily enter into the public sphere, they diminish their privacy interests.[180] Courts have further concluded that the public interest in disclosure overrides alleged privacy interests. For example, a court ordered a university to release the names of anonymous contributors who received license agreements for luxury suites at the school's sports arena. Another court ordered a local agency to release a waste disposal contractor's private financial statements used by the local agency to approve a rate increase.[181]

The trade secret privilege is for information, including a formula, pattern, compilation, program, device, method, technique or process, that: (1) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[182]

However, even when records contain trade secrets, local agencies must determine whether disclosing the information is in the public interest. When businesses give local agencies proprietary information, courts will examine whether disclosure of that information serves the public interest.[183]

The Act contains several exemptions that address specific types of information that may constitute a trade secret — pesticide safety and efficacy information,[184] air pollution data,[185] and corporate siting information.[186] Other exemptions cover types of information that could include but are not limited to trade secrets — for example, certain information on plant production, utility systems development data, and market or crop reports.[187]



Utility Customer Information

Personal information expressly protected from disclosure under the Act includes names, credit histories, usage data, home addresses and telephone numbers of local agencies' utility customers.[188] This exception is not absolute, and customers' names, utility usage data and home addresses may be disclosable in certain situations. For example, disclosure is required when requested either by a customer's agent or authorized family member,[189] an officer or employee of another governmental agency when necessary for performance of official duties,[190] by court

order or request of a law enforcement agency relative to an ongoing investigation,[191] when the local agency determines the customer used utility services in violation of utility policies,[192] or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.[193]

Utility customers who are local agency officials with authority to determine their agency's utilities usage policies have lesser protection of their personal information because their names and usage data are disclosable upon request.[194]

PUBLIC INTEREST EXEMPTION

The Act establishes a "public interest" or "catchall" exemption that permits local agencies to withhold a record if the agency can demonstrate that on the facts of the particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.[195] Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.[196] The Act does not specifically identify the public interests that might be served by not making the record public, but the nature of those interests may be inferred from specific exemptions contained in the Act. The scope of the public interest exemption is not limited to specific categories of information or established exemptions or privileges. Each request for records must be considered on the facts of the particular case in light of the competing public interests.[197]

Practice Tip:

The public interest exemption balancing test weighs only public interests—the public interest in disclosure and the public interest in nondisclosure. Agency interests or requester interests that are not also public interests are not considered.[199]

The records and situations to which the public interest exemption may apply are open-ended, and when it applies, the public interest exemption alone is sufficient to justify nondisclosure of local agency records. The courts have relied exclusively on the public interest exemption to uphold nondisclosure of local agency records containing names, addresses and phone numbers of airport noise complainants, proposals to lease airport land prior to conclusion of lease negotiations, and information kept in a public defender's database about police officers.[198]

The public interest exemption is versatile and flexible, in keeping with its purpose of addressing circumstances not foreseen by the Legislature. For example, in one case, the court held local agencies could properly consider the burden of segregating exempt from nonexempt records when applying the balancing test under the public interest exemption.[200] In that case, the court held that the substantial burden of redacting exempt information from law enforcement intelligence records outweighed the marginal and speculative benefit of disclosing the remaining nonexempt information. In another case, the court applied the balancing test to the time of disclosure to hold that public disclosure of competing proposals for leasing city airport property could properly await conclusion of the negotiation process.[201]

The requirement that the public interest in nondisclosure must "clearly outweigh" the public interest in disclosure for records to qualify as exempt under the public interest exemption is important and emphasized by the courts. Justifying nondisclosure under the public interest exemption demands a clear overbalance on the side of confidentiality.[202] Close calls usually do not qualify for an exemption. There are a number of examples of cases where a clear overbalance was not present to support nondisclosure under the public interest exemption. The courts have held that the following are all subject to disclosure under the public interest exemption balancing test: the identities of individuals granted criminal conviction exemptions to work in licensed day care facilities and the facilities employing them; records relating to unpaid state warrants; court records of a settlement between the insurer for a school district and a minor sexual assault victim; applications for concealed weapons permits; letters appointing then rescinding an appointment to a local agency position; and the identities and license agreements of purchasers of luxury suites in a university arena.[203]

Deliberative Process Privilege

The public interest exemption incorporates the deliberative process privilege.[204] Like the "drafts" exemption, the deliberative process privilege derives from the FOIA "memorandums" exemption and its implementation of the executive or deliberative process privilege.[205] Congress' main concern in enacting the "memorandums" exemption was that frank discussion of legal or policy matters might be inhibited if subject to public scrutiny, and that efficiency of government would be greatly hampered if, with respect to such matters, local agencies were forced to operate in a fishbowl.[206]

The deliberative process privilege is based on the policy of protecting the decision-making processes of government agencies, and the notion that access to a broad array of opinions and the freedom to seek all points of view, to exchange ideas, and to discuss policies in confidence are essential to effective governance in a representative democracy. The deliberative process privilege is similar to the common law privilege protecting against the disclosure of the mental processes of legislators. To prevent injury to the quality of executive decisions, the courts have focused on protecting communications to the decision maker before the decision is made. Courts have treated communications subsequent to the legislative decision as outside of the recognized privilege.[207]

Practice Tip:

The main difference between the deliberative process privilege and the closely related "drafts" exemption is that the deliberative process privilege may exempt from disclosure records that an agency normally retains.

The California Supreme Court has acknowledged that even purely factually material may be exempt from disclosure because it exposes the deliberative process. In applying the deliberative process privilege, courts focus more on the effect of the records' release and less on the nature of the records sought. The key question is whether the disclosure of materials would expose an agency's decision making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.[208]

The California Supreme Court has applied this analysis to uphold nondisclosure of the Governor's calendars concerning both past and future meetings. California appellate courts have relied on the deliberative process privilege to uphold nondisclosure of the names and qualifications of applicants for temporary appointment to a local board of supervisors, names and background information about applicants for a county supervisor's seat, and the telephone numbers of calls made and received by local agency council members from cellular phones and second phones in home offices.[209]

■ EFFECT OF PROPOSITION 59 ON EXEMPTIONS

At the November 2, 2004 general election, the voters of California passed Proposition 59 which amended the California Constitution to include a public right of access to public records. The Constitution specifically provides: "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."[210] Thus, after enactment of Proposition 59, the right of public access to documents is not simply statutory, but a basic right under the Constitution. In furtherance of that goal, the constitutional provision states that a "statute, court rule, or other authority, including, those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."[211] It also provides that any statute enacted after its effective date that limits the right of access must be adopted with findings identifying the interest protected by the limitation and the need for protecting that interest.[212]

Although Proposition 59 elevated the right of access to public records to constitutional stature, it appears to be simply declarative of existing law in terms of existing statutory exemptions. For example, while the Constitution states that an existing exemption must be narrowly construed,[213] this is consistent with longstanding case authority.[214] Moreover, the Constitution states that "[t]his subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records."[215]

No published opinion has extensively analyzed the impact of Proposition 59 on the exemptions in the Act. However, one court summarily noted that as to construction of the specific exemptions under the Act, it was simply declarative of existing law.[216] In addition, in three separate opinions, the California Attorney General has concluded that Proposition 59 did not alter the application of exemptions under the Act that existed at the time of its enactment.[217] Enactment of Proposition 59 underscores the general principle that public access to records is the rule, and nondisclosure the exception, only to be invoked in narrow circumstances after careful consideration.[218]

Endnotes

1 *State of California ex rel Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414.

2 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; see "Effect of Proposition 59 on Exemptions," p. 35.

3 Gov. Code, § 6254, subd. (k).

4 Gov. Code, § 6255; see also "Public Interest Exemption," p. 34.

5 See, for example, "Attorney Client Communications and Attorney Work Product," p. 19 and "Medical Privacy Laws," p. 25.

6 U.S.C. title 17.

7 Gov. Code, § 6254, subd. (k).

8 17 U.S.C. § 101.

9 17 U.S.C. § 102(A)(8).

10 17 U.S.C. § 107.

11 Health & Saf. Code, § 19851.

12 Health & Saf. Code, § 19851.

13 Health & Saf. Code, § 19851.

14 89 Ops.Cal.Atty.Gen. 39 (2006).

15 Gov. Code, § 6254, subd. (k).

16 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; see also "Official Information Privilege," p. 27.

17 *U.S. v. Amlani* (9th Cir. 1999) 169 F.3d 1189; *Clarke v. American Commerce Nat. Bank* (9th Cir. 1992) 974 F.2d 127; *Smith v. Laguna Sur Villas Community Assn.* (2000) 79 Cal.App.4th 639.

18 Bus. & Prof. Code, § 6149 [a written fee contract shall be deemed to be a confidential communication within the meaning of section 6068, subdivision (e) of the Business & Professions Code and section 952 of the Evidence Code]; Evid. Code, § 952 ["Confidential communication between client and lawyer"]; Evid. Code, § 954 [attorney client privilege].

19 Evid. Code § 912. See also Gov. Code § 6254.5 and "Waiver", p. 13.

20 See Rules Prof. Conduct, rule 3-600.

21 Gov. Code, § 6254, subd. (f); *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal. App.3d 778; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; see "Law Enforcement Records," p. 22.

22 *State of California ex rel. Division of Industrial Safety v. Superior Court* (1974) 43 Cal.App.3d 778; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.

23 *San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; see "Official Information Privilege," p. 27, "Identity of Informants," p. 21, and "Public Interest Exemption," p. 34.

24 Gov. Code, § 6254, subd. (a).

25 Gov. Code, § 6254, subd. (a); 5 U.S.C. § 552(b)(5).

26 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

27 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.

28 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.

29 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.

30 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.

31 *Citizens for a Better Environment v. Department of Food and Agriculture* (1985) 171 Cal.App.3d 704.

32 Gov. Code, § 6254.4.

33 Elec. Code, § 2194.

34 Gov. Code, § 6254.4(c).

35 Elec. Code, § 2194, subd. (c).

36 Elec. Code, § 2194, subd. (c)(2).

37 Gov. Code, § 6253.6.

38 Gov. Code, § 6253.5.

39 Gov. Code, § 6253.5.

40 Evid. Code, § 1041; *People v. Navarro* (2006) 138 Cal.App.4th 146.

41 *People v. Hobbs* (1994) 7 Cal.4th 948.

42 Gov. Code, § 6254, subd. (f).

43 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061; 65 Ops.Cal.Atty.Gen. 563 (1982).

44 Gov. Code, § 6254, subd. (f)(2).

45 *Rackauckas v. Superior Court* (2002) 104 Cal.App.4th 169.

46 *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048; *Williams v. Superior Court* (1993) 5 Cal.4th 337.

47 *Haynie v. Superior Court* (2001) 26 Cal.4th 1061 [911 tapes].

48 86 Ops.Cal.Atty.Gen. 132 (2003) [booking photos].

49 Gov. Code, § 6254, subd. (f).

50 Gov. Code, § 13951, subd. (b).

51 Gov. Code, § 6254, subd. (f).

52 Veh. Code, § 20012.

53 Gov. Code, § 6254, subd. (f)(1).

54 *Rosenthal v. Hansen* (1973) 34 Cal.App.3d 754.

55 Gov. Code, § 6253.9, subd. (a).

56 Gov. Code, § 6254, subd. (f)(2).

57 Pen. Code, § 841.5, subd. (a).

58 Gov. Code, § 6254, subd. (f).

59 Gov. Code, § 6254, subd. (f)(3); Pen. Code, § 841.5; *Los Angeles Police Dept. v. United Reporting Pub. Corp.* (1999) 528 U.S. 32 [120 S.Ct. 483].

60 Welf. & Inst. Code, §§ 5150, 5328.

61 Welf. & Inst. Code, § 5330.

62 Welf. & Inst. Code, § 15633.

63 Welf. & Inst. Code, §15633.

64 Welf. & Inst. Code, § 15633.

65 Welf. & Inst. Code, §§ 827, 828; see Welf. & Inst. Code, § 827.9 [applies to Los Angeles County only]; see also *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767 [release of information regarding minor who has been temporarily detained and released without any further proceedings.]

66 Welf. & Inst. Code, § 827.

67 Welf. & Inst. Code, § 828, subd. (a); Cal. Rules of Court, rule 5.552(g).

68 Welf. & Inst. Code, § 828, subd. (b).

69 Pen. Code, §§ 11165.6, 11165.7, 11167.5 & 11169.

70 Pen. Code, § 11167.5, subd. (a).

71 Gov. Code, § 6254, subd. (j).

72 Gov. Code, § 6267.

73 Gov. Code, §§ 6254, subd. (j) & 6267.

74 Gov. Code, § 6254, subd. (n).

75 *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.

76 Evid. Code, § 990 *et seq.*; Civ. Code, § 56 *et seq.*; 42 U.S.C. § 1320d.

77 Gov. Code, § 6254, subd. (k).

78 Both section 6254, subd. (c) and section 6254, subd. (k) of the Act probably apply to most records protected under the physician/patient privilege, the Confidentiality of Medical Information Act, or the Health Insurance Portability and Accountability Act. Section 6254, subdivision (c) of the Act exempts from disclosure "[p]ersonnel, medical, or similar files the disclosure of which would constitute an unwarranted invasion of personal privacy." Section 6254, subdivision (k) of the Act exempts "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the evidence Code relating to privilege." Protected individually identifiable health information is probably also exempt from disclosure under the "public interest" exemption in section 6255 of the Act.

79 Evid. Code, § 994.

80 Evid. Code, § 992.

81 Civ. Code, §§ 56.10, subd. (a), 56.05, subd. (g). "Provider of health care" as defined means persons licensed under section 500 and following of the Business and Professions Code or section 1797 and following of the Health and Safety Code, and clinics, health dispensaries or health facilities licensed under section 1200 and following of the Health and Safety Code. "Health care service plan" as defined means entities regulated under Health and Safety Code section 1340 and following. "Contractor" as defined means medical groups, independent practice associations, pharmaceutical benefits managers and medical service organizations that are not providers of health care or health care service plans.

82 Civ. Code, § 56.20.

83 Civ. Code, § 56.05, subd. (g).

84 Civ. Code, § 56.35.

85 Civ. Code, § 56.36, subds. (a), (b).

86 Civ. Code, § 56.36, subd. (c)(1).

87 Civ. Code, § 56.36, subd. (c)(2).

88 Health Insurance Portability and Accountability Act of 1996, Pub.L. No. 104-192, § 261 (Aug. 24, 1996) 110 Stat. 1936; 42 U.S.C. § 1320d.

89 42 U.S.C. § 1320d-1–d-3, Health and Human Services Summary of the Privacy Rule, May, 2003. The final privacy regulations were issued in December, 2000 and amended in August, 2002. The definitions of "health information" and "individually identifiable health information" in the privacy regulations are in 45 Code of Federal Regulations part 160.103. The general rules governing use and disclosure of protected health information are in 45 Code of Federal Regulations part 164.502.

90 42 U.S.C. § 1320d-6. Federal law defines "individually identifiable health information" as any information collected from an individual that is created or received by a health care provider, health plan, employer or health care clearing house, that relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and that identifies the individual, or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

91 42 U.S.C. §1320d-5.

92 Gov. Code, § 6254, subd. (c).

93 Gov. Code, § 6254, subd. (k).

94 Lab. Code, § 138.7, subd. (a).

95 Lab. Code, § 138.7.

96 Lab. Code, §§ 5501.5 & 138.7.

97 Gov. Code, § 6254, subd. (c).

98 Lab. Code, § 138.7.

99 Evid. Code, § 1040.

100 *White v. Superior Court* (2002) 102 Cal.App.4th Supp. 1.

101 Evid. Code, § 1040, subd. (b).

102 Gov. Code, § 6255.

103 The term "in camera" refers to a review of the document in the judge's chambers outside the presence of the requesting party.

104 *Shepherd v. Superior Court* (1976) 17 Cal.3d 107.

105 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363; *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810; *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759.

106 Evid. Code, § 1040, subd. (a).

107 *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363.

108 Gov. Code, § 6254, subd. (b).

109 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

110 *Fairley v. Superior Court* (1998) 66 Cal.App.4th 1414; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

111 *Wilder v. Superior Court* (1998) 66 Cal.App.4th 77.

112 *Poway Unified School Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496.

113 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083.

114 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893.

115 See "Medical Privacy Laws," p. 25.

116 *Register Div. of Freedom Newspapers, Inc. v. County of Orange* (1984) 158 Cal.App.3d 893.

117 See "Law Enforcement Records," p. 22.

118 *D.I. Chadbourne, Inc. v. Superior Court* (1964) 60 Cal.2d 723; *City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411.

119 Gov. Code, § 6255.

120 Evid. Code, § 950 et seq.

121 Code Civ. Proc., § 2018.030.

122 *City of Los Angeles v. Superior Court* (1996) 41 Cal.App.4th 1083.

123 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 [attorney client privilege]; *Fellows v. Superior Court* (1980) 108 Cal. App.3d 55 [work product protection].

124 Gov. Code, § 6259; Evid. Code, § 915, subd. (a).

125 Gov. Code, § 6255, subd. (a).

126 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008.

127 *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.

128 *New York Times Co. v. Superior Court* (1990) 218 Cal.App.3d 1579.

129 *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.

130 See Gov. Code, § 6254.21, subd. (f) [containing a non-exhaustive list of individuals who qualify as "elected or appointed official[s]"].

131 Gov. Code, § 6254.21.

132 Gov. Code, § 6254, subd. (c).

133 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

134 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officer Standards And Training v. Superior Court* (2007) 42 Cal.4th 278.

135 Gov. Code, § 6255; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742; see also, *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272; see Chapter 4(c).

136 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officer Standards And Training v. Superior Court* (2007) 42 Cal.4th 278; *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742; *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913.

137 *American Federation of State etc. Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913; *Bakersfield City School Dist. v. Superior Court* (2004) 118 Cal.App.4th 1041.

138 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Detroit Edison Co. v. NLRB* (1979) 440 U.S. 301 [court found a reasonable expectation of privacy in one's personnel files]; *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.

139 Gov. Code, § 6254, subd. (k); Pen. Code, § 832.7; *City of Hemet v. Superior Court* (1995) 37.Cal.App.4th 1411.

140 Pen. Code, § 832.7; Evid. Code, §§ 1043, 1046.

141 Pen. Code, § 832.8.

142 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319; *Commission on Peace Officer Standards And Training v. Superior Court* (2007) 42 Cal.4th 278.

143 *Sanchez v. City of Santa Ana* (9th Cir. 1990) 936 F.2d 1027, cert. denied (1991) 502 U.S. 957; *Miller v. Pancucci* (C.D.Cal. 1992) 141 F.R.D. 292.

144 Evid. Code, § 1043 et seq.; *Guerra v. Board of Trustees* (9th Cir. 1977) 567 F.2d 352; *Kerr v. United States Dist. Court for Northern Dist.* (9th Cir. 1975) 511 F.2d 192, aff'd, (1976) 426 U.S. 394; *Garrett v. City and County of San Francisco* (9th Cir. 1987) 818 F.2d 1515.

145 *People v. Mooc* (2001) 26 Cal.4th 1216; *People v. Thompson* (2006) 141 Cal.App.4th 1312; *City of San Jose v. Superior. Court* (1998) 67 Cal.App.4th 1135.

146 Gov. Code, § 6254.8.

147 *Braun v. City of Taft* (1984) 154 Cal.App.3d 332.

148 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319 [holding that the names and salaries of public employees earning $100,000 or more per year, including peace officers, are subject to disclosure under the Act].

149 *Commission on Peace Officer Standards And Training v. Superior Court* (2007) 42 Cal.4th 278.

150 Lab. Code, § 1776.

151 Lab. Code, § 1776, subd. (b).

152 Lab. Code, § 1776, subd. (c).

153 Contractors and subcontractors that fail to do so may be subject to a penalty of $25 per worker for each calendar day until compliance is achieved. Lab. Code, § 1776, subds. (d), (g).

154 Lab. Code, § 1776, subd. (e).

155 Lab. Code, § 1776, subd. (e).

156 Lab. Code, § 1776, subd. (e).

157 Lab. Code, § 1776, subd. (i); see Lab. Code § 16400 et seq.

158 California Code Regs., tit. 8, §§ 16400, 16402.

159 Gov. Code, § 6254, subd. (g).

160 Ed. Code, § 99157, subd. (a); *Brutsch v. City of Los Angeles* (1982) 3 Cal.App.4th 354.

161 Ed. Code, § 9915, subds. 7(a) & (b).

162 Ed. Code, §§ 99153 & 99154.

163 Ed. Code, § 99162.

164 *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810.

165 Pub. Contract Code, § 22038.

166 Gov. Code, § 6255; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.

167 Pub. Contract Code, §§ 10165, 10506.6, 10763, 20101, 20111.5, 20209.7, 20209.26 & 20651.5.

168 Gov. Code, § 6254, subd. (h).
169 Gov. Code, § 6245, subd. (h).
170 Gov. Code, § 7267.2, subd. (c).
171 Welf. & Inst. Code, § 18909.
172 Welf. & Inst. Code, § 10850.
173 *Jonon v. Superior Court* (1979) 93 Cal.App.3d 683.
174 Health & Saf. Code, § 34283.
175 Health & Saf. Code, § 34332, subd. (c).
176 Gov. Code, § 6254.1.
177 Gov. Code, § 6254, subd. (i); see also Rev. & Tax. Code, § 7056.
178 Rev. & Tax Code, §§ 7056 & 7056.5.
179 Evid. Code, §§ 1040 & 1060; Gov. Code, §§ 6254, subd. (k), 6255.
180 *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.
181 *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762.
182 Civ. Code, § 3426.1, subd. (d). This trade secret definition is set forth in the Uniform Trade Secrets Act ("UTSA") at Civil Code section 3426.1, subdivision (d). However, Civil Code section 3426.7, subdivision (c) states that any determination as to whether disclosure of a record under the Act constitutes a misappropriation of a trade secret shall be made pursuant to the law in effect before the operative date of the UTSA. At that time, California used the Restatement definition of a trade secret, which was lengthy. See *Uribe v. Howie* (1971) 19 Cal.App.3d 194. Accordingly, it is not clear that the trade secret definition that applies generally under the UTSA is the trade secret definition that applies in the context of a public records request.
183 *Uribe v. Howie* (1971) 19 Cal.App.3d 194.
184 Gov. Code, § 6254.2.
185 Gov. Code, § 6254.7.
186 Gov. Code, § 6254.15.
187 Gov. Code, § 6254, subd. (e).
188 Gov. Code, § 6254.16.
189 Gov. Code, § 6554.16, subd. (a).
190 Gov. Code, § 6254.16, subd. (b).
191 Gov. Code, § 6254.16, subd. (c).
192 Gov. Code, § 6254.16, subd. (d).
193 Gov. Code, § 6254.16, subd. (f).
194 Gov. Code, § 6265.16, subd. (e).
195 Gov. Code, § 6255; *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
196 *CBS Broadcasting, Inc. v. Superior Court* (2001) 91 Cal.App.4th 892.
197 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
198 *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008; *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065; *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001.
199 *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001.
200 *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.
201 *Michaelis, Montanari & Johnson v. Superior Court* (2006) 38 Cal.4th 1065.
202 *Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645.
203 *CBS Broadcasting Inc., v. Superior Court* (2001) 91 Cal.App.4th 892; *Connell v. Superior Court* (1997) 56 Cal.App.4th 601; *Copley Press, Inc., v. Superior Court* (1998) 63 Cal.App.4th 367; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646; *Braun v. City of Taft* (1984) 154 Cal.App.3d 332; *California State University, Fresno Assn. v. Superior Court* (2001) 90 Cal.App.4th 810.
204 Gov. Code, § 6255.
205 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
206 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
207 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
208 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
209 *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
210 Cal. Const., art. I, § 3, subd. (b)(1).
211 Cal. Const., art. I, § 3, subd. (b)(2).
212 Cal. Const., art. I, § 3, subd. (b)(2).

213 Cal. Const., art. I, § 3, subd. (b)(2).

214 *New York Times v. Superior Court* (1990) 218 Cal.App.3d 1579; *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.

215 Cal. Const., art. I, § 3, subd. (b)(5); *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319.

216 *BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742.

217 87 Ops.Cal.Atty.Gen. 181 (2004); 88 Ops.Cal.Atty.Gen. 16 (2005); 89 Ops.Cal.Atty.Gen. 204 (2006).

218 *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319.

CHAPTER 5:
JUDICIAL REVIEW AND REMEDIES

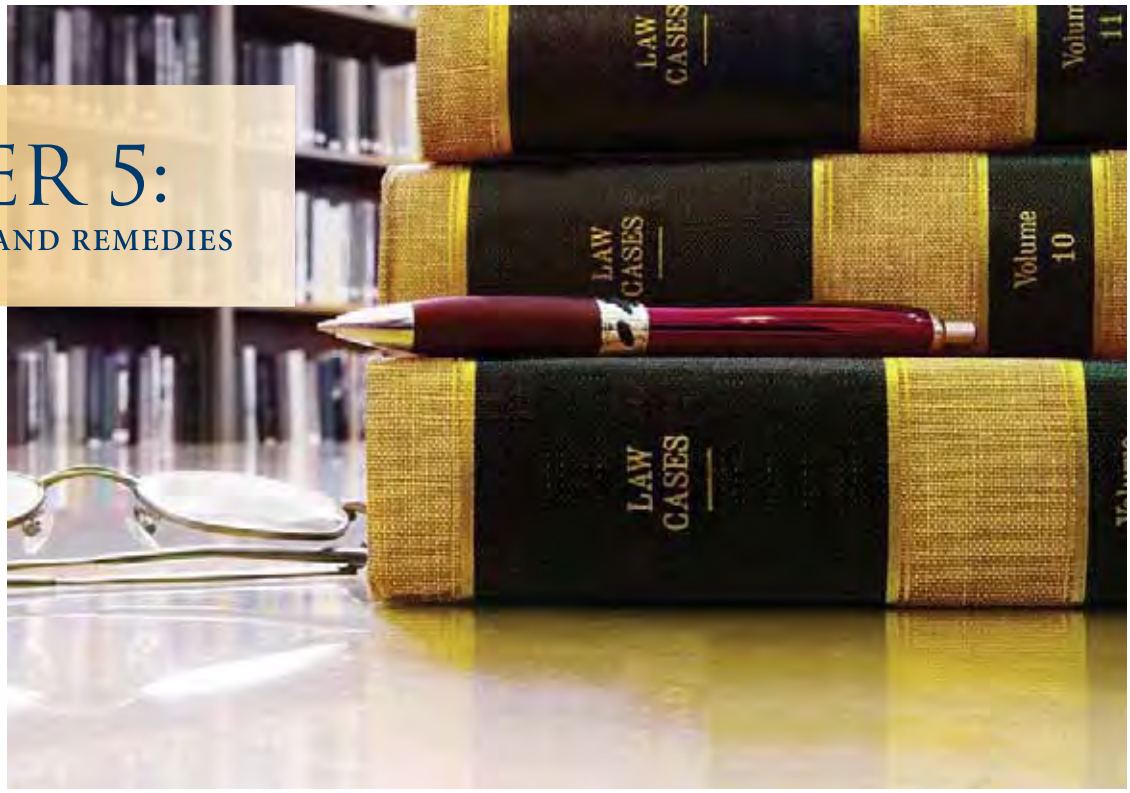
OVERVIEW

THE TRIAL COURT PROCESS AND DECISION

APPELLATE REVIEW

ATTORNEY FEES AND COSTS

CHAPTER 5:
JUDICIAL REVIEW AND REMEDIES



OVERVIEW

The Act establishes a special, expedited judicial process to resolve disputes over the public's right to inspect or receive copies of public records.[1] In contrast to other governmental transparency laws such as the Ralph M. Brown Act,[2] the Act contains no criminal penalties for a local agency's failure to comply with the Act. Rather, the Act is enforced through an expedited civil judicial process in which any person may ask a judge to compel a public agency to disclose a public record or a class of public records.[3] A person who successfully enforces his or her rights under the Act is entitled to receive reasonable attorney fees and court costs.[4] This chapter discusses the special rules that apply to lawsuits brought to enforce the Act.

Practice Tip:

Although the Act does not contain criminal penalties, violations of the Act can lead to public criticism of both the local agency and the individuals involved, payment of attorney fees by the local agency, and other non-criminal sanctions. Certain local agencies may also have local "sunshine" ordinance policies that make violations of the Act grounds for discipline of employees or officials.

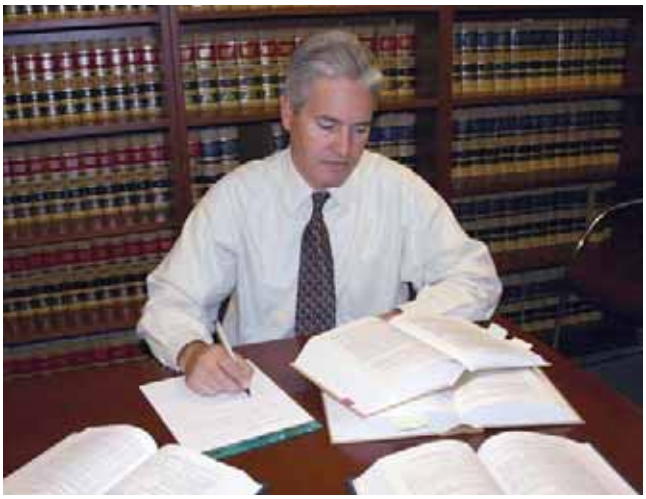
THE TRIAL COURT PROCESS AND DECISION

Any person may file a civil action for injunctive or declaratory relief or writ of mandate to enforce his or her right to inspect or receive a copy of any public record under the Act.[5] The action may be filed in any court of competent jurisdiction, which typically is the superior court in the county where the records or some part of them are maintained.[6] The Act does not contain a specific time period in which the action must be filed. Therefore, such action must be filed in a manner consistent with traditional actions for injunctive or declaratory relief or writ of mandate and would be subject to any limitations periods or equitable concepts such as laches applicable to such actions.

A local agency may not commence an action for declaratory relief to determine the agency's obligation to disclose records to a member of the public under the Act.[7] Allowing a local agency to seek declaratory relief to determine whether it must disclose records to a member of the public would frustrate the Legislature's purpose of furthering the fundamental right of every person in the state to have prompt access to information in the possession of local agencies. However, a local agency is a "person" under the Act and may maintain an action to compel the disclosure of records under the Act.[8]

A lawsuit brought to enforce the Act is not subject to the normal time periods that apply to other civil actions. The judge in each case will establish the times for responsive pleadings and for hearings with the object of securing a decision at the earliest possible time.[9] If the judge determines, based upon a verified petition, that certain public records are being improperly withheld from a member of the public, the judge will order the officer or person withholding the records to disclose the public record or show cause why he or she should not do so.[10]

In a typical action under the Act, the parties will file written arguments with the court to explain why the records should be disclosed or withheld. The court will also hold a hearing to give the parties an opportunity to argue the case. If permitted by the rules of evidence.[11] The judge may examine the record or records at issue in camera, that is, in the judge's chambers and out of the presence and hearing of others, to help decide the case.[12] The judge must decide the case based on a review of the record or records (if such review is permitted), the papers filed by the parties, any oral argument, and additional evidence as the court may allow.[13]



If the court finds that the public official's decision to refuse disclosure is not justified under the Act, the judge shall order the public official to make the record public.[14] If the judge determines that the public official was justified in refusing to make the record public, he or she shall return the item to the public official without disclosing its content with an order supporting the decision refusing disclosure.[15] The court may also order some of the records to be disclosed while upholding the decision to withhold other records. In addition, the court may order that portions of the records be redacted and compel the disclosure of the remaining portions of the records.

A local agency must disclose the public records pursuant to the trial court's order unless a party obtains a stay of the order or judgment through a petition to the appellate court. Absent a stay, any person who fails to obey the order of the court shall be ordered to show cause why he or she is not in contempt of court.[16]

APPELLATE REVIEW

As part of the expedited judicial review process established by the Act, a trial court's order is not considered to be a final judgment subject to the normal and often lengthy appeal process. In place of a normal appeal, such orders are subject to immediate review through the filing of a petition to the appellate court for the issuance of an extraordinary writ.[17] This manner of providing for appellate review through an extraordinary writ procedure rather than a normal appeal has been held to be constitutional.[18]

A party seeking review of a trial court's order must file a petition for review with the appellate court within 20 days after he or she is served with a written notice of entry of the order, or within such further time not exceeding an additional 20 days as the trial court may for good cause allow. If the written notice of entry of the order is served by mail, the period within which to file the petition is increased by five days.[19]

If a party wishes to prevent the disclosure of public records pending appellate review of the trial court's decision, that party must ask the appellate court for a stay of the order or judgment. The appellate court shall not grant such a stay unless the petitioning party demonstrates both that it will sustain irreparable damage because of the disclosure and that it is probable that the party will succeed on the merits of the case in the appellate court.[20]

Because the trial court's decision is not a final judgment for which there is an absolute right of appeal, the appellate court may decline to review the case without a hearing or without issuance of a detailed written opinion. However, since the intent of substituting writ review for the normal appeal process is to provide for speedier appellate review, not to provide for less appellate review, an appellate court may not deny an apparently meritorious writ petition that is timely presented and procedurally sufficient merely because the petition presents no important issue of law or because the court considers the case less worthy of its attention than other matters.[21]

Once a court of appeal accepts a petition for review, the appellate process proceeds in much the same fashion as a normal appeal. The appellate court will establish a briefing schedule and set the matter for a hearing once briefing is complete. The scope of review is equivalent to the scope of review on appeal, and an appellate court will consider the merits of a trial court's order as if the case were on appeal.[22] The appellate court will conduct an independent review of the trial court's ruling, with the factual findings made by the trial court being upheld if based on substantial evidence.[23]

The decision of the appellate court, whether to deny review or on the merits of the case, is subject to discretionary review by the California Supreme Court through a petition for review.

While the trial court's decision regarding disclosure of records is not subject to the normal appeal process, other decisions of the trial court related to a lawsuit under the Act are subject to appeal. Thus, a trial court's decision to deny attorney fees and costs under the Act is subject to appeal and is not subject to the extraordinary writ process.[24] Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.[25]

■ ATTORNEY FEES AND COSTS

If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorney fees to the plaintiff.[26] A plaintiff will be considered the prevailing party if the lawsuit results in the disclosure of some or all of the requested records. This means that the plaintiff will likely be considered the prevailing party even when he or she has only achieved a partial victory in the lawsuit.[27] In addition, a plaintiff may be considered the prevailing party when the local agency discloses some or all of the records after the lawsuit is filed but prior to a court order requiring such disclosure, if the agency's disclosure was the result of or prompted by the lawsuit.[28] On the other hand, if the local agency did not decline to provide the records but, acting diligently, was only able to disclose them after the filing of the lawsuit, the plaintiff will likely not be considered the prevailing party because the lawsuit did not result in or prompt the disclosure.[29]

A member of the public may be entitled to an award of attorney fees and costs even when he or she is not denominated as the "plaintiff" in the action.[30] If the party is the functional equivalent of a plaintiff in a Public Records Act lawsuit—that is, if the party's intent to invoke the Act prompted the litigation—that party may be considered the prevailing plaintiff under the Act.

The local agency, not the public official who made the decision, must pay any award of costs and fees. The award does not become a personal liability of the public official who made the decision not to disclose the public records.[31]

The successful local agency defendant may seek an award of attorney fees and court costs against an unsuccessful plaintiff, but the agency will only obtain such an award in very limited circumstances. Only when the court finds that the plaintiff's case is clearly frivolous may it award court costs and reasonable attorney fees to the local agency.[32]

Endnotes

1 Gov. Code, §§ 6258, 6259.
2 Gov. Code, § 54950 et seq.
3 Gov. Code, § 6258.
4 Gov. Code, § 6259, subd. (d).
5 Gov. Code, § 6258.
6 Gov. Code, § 6259, subd. (a).
7 *Filarsky v. Superior Court* (2002) 28 Cal.4th 419.
8 *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759.
9 Gov. Code, § 6258.
10 Gov. Code, § 6259, subd. (a).
11 Evid. Code. § 915.
12 Gov. Code, § 6259, subd. (a).
13 Gov. Code, § 6259, subd. (a).
14 Gov. Code, § 6259, subd. (b).
15 Gov. Code, § 6259, subd. (b).
16 Gov. Code, § 6259, subd. (c).
17 Gov. Code, § 6259, subd. (c).
18 *Powers v. City of Richmond* (1995) 10 Cal.4th 85.
19 Gov. Code, § 6259, subd. (c).
20 Gov. Code, § 6259, subd. (c).
21 *Powers v. City of Richmond* (1995) 10 Cal.4th 85.
22 *State Bd. of Equalization v. Superior Court* (1992) 10 Cal.App.4th 1177.
23 *Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325.
24 *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381.
25 *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925.
26 Gov. Code, § 6259, subd. (d).
27 *Los Angeles Times v. Alameda Corridor Transportation. Authority* (2001) 88 Cal.App.4th 1381.
28 *Rogers v. Super. Ct.* (1993) 19 Cal.App.4th 469; *Belth v. Garamendi* (1991) 232 Cal.App.3d 896.
29 *Motorola Communication & Electronics, Inc. v. State Dept. of General Services* (1997) 55 Cal.App.4th 1340; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469.
30 *Fontana Police Depart. v. Villegas Banuelos* (1999) 74 Cal.App.4th 1249.
31 Gov. Code, § 6259, subd. (d).
32 Gov. Code, § 6259, subd. (d); *Butt v. City of Richmond* (1996) 44 Cal.App.4th 925.

CHAPTER 6:
RECORDS MANAGEMENT

PUBLIC MEETING RECORDS

ELECTRONIC RECORDS

ELECTRONIC DISCOVERY

RECORDS RETENTION AND DESTRUCTION LAWS

CHAPTER 6:
RECORDS MANAGEMENT

Practice Tip:

Some agencies have found it useful to adopt electronic records policies governing such issues as: what electronic records (for example, emails) are considered "retained in the ordinary course of business" for purposes of the Act; whether personal electronic devices (like computers, personal data assistants, cell phones, etc.) may be used to store or send electronic communications concerning the agency, or whether agency devices must be used; etc.

PUBLIC MEETING RECORDS

Any person may request to receive a copy of a local agency meeting agenda or agenda packet by mail.[1] If requested, the agenda material must be made available in appropriate alternative formats to persons with disabilities.[2] If a local agency receives a written request to send agenda materials by mail, the materials must be mailed when the agenda is posted or distributed to a majority of the agency's legislative body, whichever occurs first.[3] Requests for mailed copies of agendas or agenda packets are valid for the calendar year in which they are filed, but must be renewed after January 1 of each subsequent year.[4] Local agency legislative bodies may establish a fee for mailing agenda materials.[5] The fee may not exceed the cost of providing the service.[6] Failure of a requester to receive agenda material is not a basis for invalidating action taken at the meeting for which agenda material was not received.[7]

Writings that are distributed to all or a majority of all members of a legislative body in connection with a matter subject to discussion or consideration at a public meeting of the body are public records (subject to the exemptions in the Act) and must be made available upon request without delay.[8] Where such nonexempt writings are distributed during a public meeting, in addition to making them available for public inspection at the meeting (if prepared by the agency or member of its legislative body) or after the meeting (if prepared by another person), they must be made available in appropriate alternative formats upon request by a person with a disability.[9] The agency may charge a fee for a copy of this record; however, no surcharge may be imposed on persons with disabilities.[10] Records pertaining to agenda items must be made available for public inspection at a location listed in the meeting agenda if the records are distributed less than 72 hours prior to the meeting.[11]

ELECTRONIC RECORDS

"Public records" subject to the Act include "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics."[12] Therefore, records subject to the Act include records in any media, including electronic media, in which government agencies may possess records. This is underscored by the definition of "writings" treated as public records, which includes any "transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored."[13] Some provisions of the Act deal explicitly with electronic records.

Practice Tip:

Local agencies should consult with legal counsel concerning disclosure of metadata or GIS information.

The Act obligates agencies to provide electronic copies of existing, nonexempt records that are requested in an electronic format that the agency has already used for itself or transmission to another agency, unless doing so would compromise the security or integrity of the original record, or any proprietary software in which it is maintained, or unless otherwise prohibited by law.[14] Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.[15] However, requesters may be required to bear additional costs of producing the electronic copy, such as programming and computer services costs, if the records are only produced at regularly scheduled intervals, or production of the record would require data compilation, extraction or programming.[16] Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.[17]

Electronic records may include "metadata," or data about data contained in a record that is not visible in the text. For example, metadata may describe how, when or by whom particular data was collected, and contain information about document authors, other documents, or commentary or notes. No provision of the Act expressly addresses metadata, and no reported court opinions have considered whether or the extent to which metadata is subject to disclosure. Nor does the Act or its case law provide guidance on whether agencies have a duty to disclose electronic public records that contain exempt metadata if the agency is unable to electronically remove the metadata.

Electronic records maintained by local agencies may also include geographic information system (GIS) records and GIS technology that permits storage, processing and display of geographical information. Many local agencies use GIS programs and databases for a broad range of purposes, including the creation and editing of maps depicting property and facilities of importance to the agency and the public. As with metadata, the Act does not expressly address, and no published cases discuss, GIS information disclosure.

The Act permits government agencies to develop and commercialize computer software and to benefit from copyright protections for agency-developed software. Computer software developed by state or local agencies, including computer mapping systems, computer programs, and computer graphics systems, is not a public record subject to the Act.[18] As a result, public agencies are not required to provide copies of agency-developed software pursuant to the Act. The Act authorizes state and local agencies to sell, lease, or license agency-developed software for commercial or noncommercial use.[19] The exception for agency-developed software does not affect other public agency electronic records.[20]

ELECTRONIC DISCOVERY

The importance of maintaining a written document retention policy is evident by revisions to Rule 26 of the Federal Rules of Civil Procedure, which took effect December 1, 2006. Rule 26 requires parties in federal court litigation to address the production and preservation of electronic records. These rule changes do not require a local agency to alter its routine management or storage of electronic information. They do, however, illustrate the importance of having formal document retention policies.

In general, once federal court litigation begins, a local agency has a duty to preserve information for discovery. In some cases, the local agency may have to suspend the routine operation of its information systems in order to preserve information relevant to the litigation.

Practice Tip:

The definition of "public records" for purposes of the Act and state records retention laws are different, and because local agency officials retain some discretion under the Act and state records retention laws concerning what records an agency retains, the fact that a particular type of public record is subject to disclosure under the Act does not necessarily mean that local agencies must retain such records.

RECORDS RETENTION AND DESTRUCTION LAWS

The Act is not a records retention statute. The Act does not prescribe what type of information a public agency may gather or keep, or provide a method for correcting records.[21] Its sole function is to provide for disclosure.[22] Other provisions of state law govern retention of public records.

Local agencies generally must retain public records for a minimum of two years, although some records may be destroyed sooner.[23] For example, duplicate records that are less than two years old may be destroyed if no longer required.[24] State law does not permit destruction of records affecting title to or liens on real property, court records, records required to be kept by statute, and the minutes, ordinances, or resolutions of the legislative body or city board or commission.[25] Most local agencies adopt records retention schedules as a key element of a records management system. The Secretary of State has provided local governments with records management guidelines.[26]

However, there is no definition of the "public records" subject to state records retention statutes.[27] The Attorney General has opined that the definition of "public records" for purposes of the records retention statutes is "a thing which constitutes an objective lasting indication of a writing, event or other information, which is in the custody of a public officer and is kept either (1) because a law requires it to be kept or (2) because it is necessary or convenient to the discharge of the public officer's duties and was made or retained for the purpose of preserving its informational content for future reference."[28] Under this definition, local agency officials retain some discretion concerning what agency records must be kept pursuant to state records retention laws. Similarly, the Act allows for local agency discretion concerning what preliminary drafts, notes or interagency or intra-agency memoranda are retained in the ordinary course of business.[29]

Endnotes

1 Gov. Code, § 54954.1.
2 Gov. Code, § 54954.1.
3 Gov. Code, § 54954.1.
4 Gov. Code, § 54954.1.
5 Gov. Code, § 54954.1.
6 Gov. Code, § 54954.1.
7 Gov. Code, § 54954.1.
8 Gov. Code, § 54957.5, subd. (a).
9 Gov. Code, § 54957.4, subd. (c)
10 Gov. Code, § 54957.5, subd. (d).
11 Gov. Code, § 54957.5, subds. (b)(1),(2).
12 Gov. Code, § 6252, subd. (e), emphasis added.
13 Gov. Code, § 6252, subd. (g).
14 Gov. Code, § 6253.9, subd. (a).
15 Gov. Code, § 6253.9, subd. (a)(2).
16 Gov. Code, § 6253.9, subd. (b).
17 Gov. Code, § 6253.9, subd. (c). See "No Duty to Create a Record or to Create a Privilege Log," p. 13.
18 Gov. Code, § 6254.9, subds. (a), (b).
19 Gov. Code, § 6254.9, subd. (a).
20 Gov. Code, § 6254.9, subd. (d).
21 *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661.
22 *Los Angeles Police Dept. v. Superior Court* (1977) 65 Cal.App.3d 661.
23 Gov. Code, § 34090, subd. (d).
24 Gov. Code, § 34090.7.
25 Gov. Code, § 34090, subds. (a), (b), (c), (e).
26 The Secretary of State's Local Government Records Management Guidelines may be viewed at *http://www.sos.ca.gov/archives/locgov/localgovrm7.pdf*.
27 64 Ops.Cal.Atty.Gen. 317 (1981).
28 64 Ops.Cal.Atty.Gen. 317 (1981).
29 Gov. Code, § 6254, subd. (a). See "Drafts," p. 20.

APPENDIX:
FREQUENTLY REQUESTED INFORMATION AND RECORDS

THE PEOPLE'S BUSINESS:
A Guide to the California Public Records Act

LEAGUE OF CALIFORNIA CITIES

THE PEOPLE'S BUSINESS:

A Guide to the California Public Records Act

LEAGUE OF CALIFORNIA CITIES

Frequently Requested Information and Records

This table is intended as a general guide on the applicable law and is not intended to provide legal advice. The facts and circumstances of each request should be carefully considered in light of the applicable law. A local agency's legal counsel should always be consulted when legal issues arise.

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Agenda materials distributed to a legislative body relating to an open session item	Yes	Gov. Code, § 54957.5. *For additional information, see p. 50 of "The People's Business: A Guide to the California Public Records Act," hereafter referred to as "the Guide".*
Calendars of Elected Officials	Probably not, but note that there is no published appellate court decision on this issue post- Prop. 59.[1]	*Times Mirror Co. v. Superior Court (1991) 53 Cal.3d. 1325 and Rogers v. Superior Court* (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. See also, 87 Ops.Cal.Atty.Gen. 181 (2004); 88 Ops.Cal. Atty.Gen. 16 (2005); 89 Ops.Cal.Atty.Gen. 204 (2006), as to scope of Prop. 59. *For additional information, see p. 35 of the Guide.*
Contact information – Names, addresses, and phone numbers of crime victims or witnesses	No	Gov. Code, § 6254(f)(2). *For additional information, see p. 29 of the Guide.*
Citizen complaints against peace officers – annual summary report to AG	Yes	Pen. Code, § 832.7(c). *For additional information, see p. 30 of the Guide.*
Citizen complaint information – names, addresses, and telephone numbers	No	*City of San Jose v. San Jose Mercury News* (1999) 74 Cal. App.4th 1008. *For additional information, see p. 30 of the Guide.*
Claims for damages	Yes	*Poway Unified School District v. Superior Court* (1998) 62 Cal.App.4th 1496.
Election petitions *(initiative, referendum and recall petitions)*	No, except to proponents if petition found to be insufficient.	Gov. Code, § 6253.5; Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. *For additional information, see p. 21 of the Guide.*
Emails between government staff	It depends.	Generally, emails are deleted by administrative policy and are not retained in the ordinary course of business. (*See* § 6254(a)). See also *Times Mirror v. Superior Court* (1991) 53 Cal.3d 1325; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. *For additional information, see p. 35 of the Guide.*

1 *The analysis with respect to elected officials may not necessarily apply to executive officers such as City Managers or Chief Administrative Officers, and there is no case law directly addressing this issue.*

Frequently Requested Information and Records, Continued

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Employment Agreements/ Contracts	Yes	Gov. Code, §§ 6254.8 and 53262(b). *For additional information, see p. 30 of the Guide.*
Form 700 (Statement of Economic Interests) and Campaign Statements	Yes[2]	Gov. Code, § 81008
Grading documents including geology reports, compaction reports, and soils reports submitted in conjunction with an application for a building permit	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 6254(e). *For additional information, see p. 19 of the Guide.*
Juvenile Court Records	No	*T.N.G. v. Superior Court* (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. *For additional information, see p. 24 of the Guide.*
Legal billing statements	Generally, yes, as to amount billed. No, as to any billing detail which reflects an attorney's impressions, conclusions, opinions or legal research or strategy.	Gov. Code, § 6254(k); Evid. Code, § 950, et seq.; *Smith v. Laguna Sun Villas Community Assoc.* (2000) 79 Cal.App.4th 639; *United States v. Amlani,* 169 F.3d 1189 (9th Cir. 1999); *Clarke v. American Commerce National Bank*, 974 F.2d. 127 (9th Cir. 1992); but see Gov. Code, § 6254(b) as to the disclosure of billing amounts reflecting legal strategy in pending litigation. *For additional information, see p. 19, 28 of the Guide.*
Library Circulation Records	No	Gov. Code, § 6254(j) and 6267. *For additional information, see p. 25 of the Guide.*
Medical Records	No	Gov. Code, § 6254(c). *For additional information, see p. 25 of the Guide.*
Mental Health detentions *(5150 reports)*	No	Welf. & Inst. Code, § 5328. *For additional information, see p. 24 of the Guide.*
Minutes of Closed Sessions	No	Gov. Code, § 54957.2(a). *For additional information, see p. 19, 34, 35 of the Guide.*
Notices/Orders to property owner re: housing/building code, violations	Yes	Gov. Code, § 6254.7(c). *For additional information, see p. 20 of the Guide.*
Official Building Plans *(architectural drawings and plans)*	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§101 and 102. *For additional information, see p. 19 of the Guide.*
Personal Financial Records	No	Gov. Code, § 7470, 7471, 7473; see also Gov. Code, § 6254(n). *For additional information, see p. 25 of the Guide.*

2 *It should be noted that these statements must be made available for inspection and copying not later than the second business day following the day on which the request was received.*

Frequently Requested Information and Records, Continued

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Personnel		*For additional information, see p. 29-31 of the Guide.*
• Employee inspection of own personnel file	Yes, with exceptions.	• Lab. Code, § 1198.5. This section applies to charter cities. *See* Gov. Code, § 31011. For peace officers, see Gov. Code, § 3306.5.
• Names and salaries (including performance bonuses and overtime) of public employees, including peace officers	Yes, absent unique, individual circumstances. However, other personal information such as social security numbers, home telephone numbers and home addresses are generally exempt from disclosure per Gov. Code, § 6254(c).	• *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court* (2007) 42 Cal.4th 319.
• Test Questions, scoring keys, and other examination data.	No	• Gov. Code, § 6254(g)
Police		*For additional information, see p. 22-25 of the Guide.*
• Citizen complaint policy	Yes	• Pen. Code, § 832.5(a)(1)
• Criminal history	No	• Pen. Code, § 13300 *et seq.*; Pen. Code, § 11105 *et seq.*
• Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video	No	• Gov. Code, § 6254(f); *Haynie v. Superior Court* (2001) 26 Cal.4th 1061.
• Crime reports	Yes	• Gov. Code, §§ 6254(f), 6255
• Gang intelligence information	No	• Gov. Code, § 6254(f); 79 Ops.Cal.Atty Gen. 206 (1996).
• In custody death reports to AG	Yes	• Gov. Code, § 12525
• List of concealed weapon permit holders	Yes	• Gov. Code, § 6254(u)(1); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• Concealed weapon permits and applications	Yes, except for home/ business address and medical/psychological history.	• Gov. Code, § 6254(u)(1); *CBS, Inc. v. Block* (1986) 42 Cal.3d 646.
• Officer's personnel file	No	This information can only be disclosed through a Pitchess motion. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045.
• Peace officer's name, employing agency and employment dates	Yes, absent unique, individual circumstances.	• *Commission on Peace Officer Standards and Training v. Superior Cour*t (2007) 42 Cal.4th 278.
• Names of officers involved in critical incidents	Yes, absent unique, individual circumstances.	• *Commission on Peace Officer Standards and Training v. Superior Court* (2007) 42 Cal.4th 278; *New York Times v. Superior Court* (1997) 52 Cal.App.4th 97.
• Traffic accident reports	Yes, to certain parties.	• Veh. Code, § 16005 [only *disclose* to those needing the information, such as insurance companies, and the individuals involved].

Frequently Requested Information and Records, Continued

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
Public Contracts		
• Bid Proposals, RFP proposals	Yes, but only after negotiations are complete.	• *Michaelis v. Superior Court* (2006) 38 Cal. 4th 1065; *but see* Gov. Code, § 6255 and Evid. Code, § 1060. *For additional information, see p. 31-32 of the Guide.*
• Financial information submitted for bids	No	• Gov. Code, §§ 6254(a),(h) and (k), 6254.15 and 6255; *Schnabel v. Superior Court of Orange County* (1993) 5 Cal.App.4th 704, 718. *For additional information, see p. 31-32 of the Guide.*
• Trade secrets	No	• Evid. Code, § 1060; Civ. Code, § 3426, et seq. *For additional information, see p. 33 of the Guide.*
Purchase price of real property	Yes, after the agency acquires the property.	Gov. Code, § 7275
Real Estate		*For additional information, see p. 32 of the Guide.*
• Property information (such as selling assessed value, square footage, number of rooms)	Yes	• 88 Ops.Cal.Atty.Gen. 153 (2005)
• Appraisals and offers to purchase	Yes, but only after conclusion of the property acquisition.	• Gov. Code, § 6254(h); Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.
Report of arrest not resulting in conviction	No, except as to peace officers or peace officer applicants.	Lab. Code, § 432.7
Settlement Agreements	Yes	*Register Division of Freedom Newspapers v. County of Orange* (1984) 158 Cal.App.3d 893. *For additional information, see p. 28 of the Guide.*
Software, including mapping systems	No	Gov. Code, § 6254.9; 88 Ops.Cal.Atty.Gen. 153 (2005). *For additional information, see p. 51 of the Guide.*
Taxpayer information received in connection with collection of local taxes	No	Gov. Code, § 6254(i). *For additional information, see p. 33 of the Guide.*
Telephone Records of Elected Officials	Yes, as to expense totals. No, as to phone numbers called.	See *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469. *For additional information, see p. 35 of the Guide.*
Utility usage data	No, with certain exceptions.	Gov. Code, § 6254.16. *For additional information, see p. 33 of the Guide.*
Voter information	No	Gov. Code, § 6254.4. *For additional information, see p. 21 of the Guide.*

LEAGUE OF CALIFORNIA CITIES

THE PEOPLE'S BUSINESS:

A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT

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APPENDIX E - PUBLIC FACING COMMUNICATIONS, COUNCIL NOTIFICATIONS AND SOCIAL MEDIA POLICY

CITY OF AMERICAN CANYON

Public and Media Communications Policy

Policy Statement:

The City of American Canyon encourages the positive exchange of accurate and timely information among City Council Members, City staff, representatives of the media, community groups, citizens, and other interested parties. The City Manager and department directors are charged with providing an "objective playing field" for the legislative process and distribution of public information for the media.

The City endeavors to keep citizens apprised of pertinent information concerning community issues, policies, activities, services and events to create greater awareness of local government and to facilitate the community's participation in the local government decision-making process.

The City follows all regulations and policies related to use of public funds for any purpose other than those related to City administration, operations, and services. In no case shall City resources be used for any promotional purposes including, but not limited to, promotion of a political position or individual running for, or maintaining a political office.

Policy:

I. Public Communications

A. Letters and opinion surveys designed for mass distribution shall be reviewed and coordinated with the City Manager's Office for purpose, content, format analysis, and for placement strategies.

B. All printed materials (fliers, posters, signs, pamphlets, brochures, advertisements, maps, presentation materials, etc.) designed for distribution to and/or viewing by the public shall be reviewed by the City Manager or his/her designee prior to printing, copying, or uploading.

C. Requests from the public or from community groups for the involvement of City officials, employees, or other City resources in events, photo opportunities, or for other purposes shall be made through the City Manager or his/her designee to determine the appropriateness and legality of the involvement. Criteria for granting such a request shall be approved by the City Council (see Table 1).

II. State Regulation for Newsletters, Mass Mailings, and other Media

All mass-distributed documents and other media prepared at "taxpayers' expense shall comply with all FPPC rules and regulations regarding all printed and photographical materials, video productions, and other media-related features. (The latest FPPC rules and regulations can be found at www.fppc.ca.gov)

III. Use of Public Funds for Political Purposes

Use of any City resources such as equipment, supplies, employee time, and/or City symbols (any symbol or insignia of the City that would create a nexus with the public entity and a political purpose/office) is expressly prohibited unless approved by the governing body and/or the City Manager. Public funds cannot be extended for any political purposes such as the promotion of a political position or office. It is generally prohibited because it could reasonably be interpreted or construed as implying the City's connection, approval, or endorsement of the involved political issue, office, or function. As stated in # I above, requests for such City involvement shall be made through the City Manager or his/her designee to determine the appropriateness and legality of such involvement and if approval by the governing body is required.

IV. Media Response Philosophy

City staff shall be timely, accurate and concise in their responses to the media. The City encourages and promotes accurate press coverage of programs, events, and decisions which could be of interest to a significant segment of the community. Inquiries from the news media are to be given a high priority and shall be responded to as quickly, efficiently, and professionally as possible. Every effort shall be made to meet media deadlines and to ensure that all information released is accurate, concise, and well organized.

When responding to the media, City staff shall represent the official position of the City and shall limit their comments to stating the facts and circumstances, without personal opinions or conclusions.

Council Members speaking to the media, who are not representing the official position of the City, or Council, shall clearly identify that they are responding on their own behalf and do not represent the Cit, or the Council in their comments on that specific issue.

V. Press Releases

City press releases constitute written or verbal communications to the media regarding official City business.

A. Responsibility – All media releases relative to major citywide policies and actions shall be prepared and distributed by the City Manager's Office or his/her designee. Each department shall prepare and distribute releases related to their specific department. However, those releases need to be approved by the City Manager prior to release. In addition, the City Manager shall be notified prior to the release of information to the media in cases which are significant or controversial except those circumstances in public safety that would make this impracticable. In those situations, the department involved needs to notify the City Manager as soon as possible after the release of significant information

B. Release Preparation and Format – Press releases shall be prepared according to the City's established format. The City Clerk will maintain a file of all press releases.

VI. Release of Information Pertaining to Significant/Controversial Issues and Events

Definition of Issues: It is the responsibility of department directors to notify the City Manager of significant events or issues which occur within their departments or that have had a public airing resulting in a conflict or public agitation. Such event or issue may be of major interest to the City Council, general public or the media. Such issues/events include, but are not limited to:

1. An event/issue in a department or program that could have financial, labor, or environmental consequences resulting in controversy and aggravation (eg. sewer spill).
2. Injury or death of a City employee while on or off official duty.
3. Major malfunctions of a City facility that could impact the general welfare of the public or environment.
4. An unexpected work stoppage or inability to provide a critical City service.
5. The arrest or conviction of a City employee, which may impact that individual's ability in successfully carrying out his/her professional duty or that may attract significant public attention due to the nature of the arrest or conviction.
6. Major police or fire activities

VII. Reporting Procedure

The City Manager will determine if it is necessary to contact the City Council or other department directors. However, the Police Department may notify and inform the entire City Council on a significant event after there has been an attempt to notify the City Manager. When possible, the City Manager shall notify the City Council prior to communicating to the media on those issues believed to be controversial or of major concern.

VIII. Back-up Procedure

If the City Manager is unavailable, the department director shall determine if it is necessary to contact the City Council or other department directors. The department director should use his/her own judgment in releasing information to the press or the public regarding significant events or issues.

IX. Media Responders

A. Spokesperson – The City Manager will respond directly or designate a media spokesperson to respond to an issue of major public significance to ensure that the information is disseminated quickly and accurately to all interested media sources. The City Manager will then notify all appropriate department directors to forward all media inquiries regarding the particular issue to the appointed spokesperson. It is essential that a spokesperson is kept abreast and briefed on the status of the event as it occurs. It is important to note that the chain of command can be modified to expedite the release of crucial information.

B. Media Contacts to Staff – Employees shall refer media inquires to their department directors. A department director may delegate an employee to respond to an inquiry because of her/his involvement with an event or issue. In such cases, the staff member should work with their department director before the interview to develop appropriate responses to anticipated questions. The department director may want to contact the City Manager's Office for assistance in such matters.

C. City Council – Council Members are encouraged to notify the City Manager when they are approached by the media, especially when they are responding to controversial issues. Council Members are encouraged to review such issues with the City Manager for assistance in formulating their response.

D. Emergency Operations –Emergency Operations Center procedures will take precedent during a disaster.

E. Police Issues – Whenever there is a significant event involving a major police activity, the first media contact is the Police Chief or his/her designee, followed by the City Manager.

X. How to Respond to Press Inquiries

All media inquiries received by staff should be given a high priority and responded to as quickly as possible. Every effort should be made to meet media deadlines and to ensure that all information that is released is accurate. Clerical staff should be instructed to give priority to media calls by alerting their respective department director.

A. It is important to determine a reporter's focus for a story as well as the specific information being requested. A reporter may unintentionally present the particular facts in a manner that might cause a misunderstanding of the facts surrounding specific City issues. By knowing the reporter's intentions, one can attempt to respond more accurately and in a manner that captures the full range of the issues and facts involved and within the larger context that the issue exists.

B. Any staff member (management or non-management) who responds to a media inquiry, provides an interview, appears on a radio or television program, etc., shall notify his/her immediate supervisor, the department director, and the City Manager either by phone, email, or written memo detailing the nature and possible implications of the media inquiry.

C. Regarding controversial matters *only* (see Section VI), the City Manager must be consulted before conducting the interview. This should provide the spokesperson an opportunity to review anticipated questions and to formulate and properly position appropriate responses. This notification process is only necessary for those significant issues facing a particular department and should not include routine interviews that are conducted on a regular basis by a specific department, the only exception being an urgent public safety issue that requires an immediate response.

XI. **Media Etiquette**

City staff shall maintain and strengthen the relations between the City and the media.

A. Responding to Council Actions – Staff shall not publicly make judgmental comments regarding individual Council Members, Council actions, City Administration or official City policy when responding to media inquiries. Staff shall refrain from anticipating an action or position which has not been formally taken by the City Council or City. Any inquiry regarding "why" an individual Council Member voted in a particular manner shall be forwarded to that Council Member.

B. Scope of Response – Staff members shall not respond to media inquiries that are not directly related to their professional responsibilities. Staff members should assist the media in receiving the needed information by referring them to an appropriate department director.

C. Inaccurate Information – The media shall not be intentionally misled or provided inaccurate information by a staff member regarding any City policy or event.

XII. **Public and Confidential Information**

Most City records and official City meetings are open to the public and media. The media are no more or less privileged than the general public in being provided access to the City Council meetings and City records. In situations where there is a discrepancy or uncertainty on the part of a City employee regarding the release of an official record to the media, the City Attorney's Office should be contacted to make the final determination.

Attendance at Public Meetings - The media and public may attend and report on actions taken at Council meetings, study sessions, as well as regularly scheduled Commission meetings.

Closed Sessions – Public and media attendance is not allowed at closed Council sessions.

Public Records – The media and the general public have access to all records or proceedings pursuant to the provisions of the State of California Public Records Act (Government Code Sections 6250 it seq.). However, the Public Records Act does exempt specific categories of records. A Public Records Request Form is required for all public records requests (copies of form are available in the City Clerk's Office).

Not for Public Disclosure – Media inquiries regarding the specifics of pending litigation, policy or administrative drafts, matters involving a significant exposure to litigation and certain personnel-related information that would constitute an unwarranted invasion of individual privacy are usually exempt from public disclosure.

Litigation Issues – Staff members shall not respond to media inquiries on behalf of the City involving City litigation, policies, or activities without first contacting the City Attorney's Office. The City Attorney's Office should serve as the point of contact regarding clarification before responding to a media inquiry. The Manager may provide an official City position regarding City litigation issues after first consulting with the City Attorney's Office.

TABLE 1 - CRITERIA FOR GRANTING CITY PARTICIPATION REQUESTS THAT MAY RESULT IN MEDIA EXPOSURE

The following are the criteria to use for addressing requests from the public or from community groups for the involvement of City officials, employees, or other City resources (See Section IC in policy):

- The City Manager shall notify all Council Members of the event.
- The community group must provide services/assistance to the community members of the City of American Canyon.
- The City Council has adopted within the past twenty-four (24) months a resolution endorsing the event or activity.
- All Members of the City Council Board will be invited to observe the use of City resources (equipment, personnel, etc.) being utilized in the actual event, including but not limited to, addressing the group, participating in conversations during the event, and any action to document the City's endorsement on use of the City resources.
- The City Manager is given ten (10) working days' notice of the request. (Note: the City Manager may waive this criterion under extraordinary circumstances or if there has been a history of City Manager-approved participation in the past.)

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APPENDIX F - TRAVEL POLICY

CITY OF AMERICAN CANYON
TRAVEL POLICY

PURPOSE

To establish a uniform policy for City employees, City elected officials, City appointed officials, and City commissioners hereafter known as "employees" for travel and business expenses. This policy establishes procedures for pre-travel authorization and reimbursement of expenses incurred by employees when traveling on official City business or attending approved training programs. The governing rule for all City travel expenses shall be budget, availability, economy, convenience, and propriety.

GENERAL PROVISIONS

It is the policy of the City of American Canyon that all travel expenses and business expenses incurred meet the following criteria:

1. The expense incurred is of direct benefit to the City.
2. The amount of the expense is reasonable in terms of the event or activity involved.
3. The expenses incurred are within the department's budget and are approved by the department head. The department heads have approval authority for employees traveling within the state.
4. The City Manager or designee will approve travel and business expenses incurred by employees for all out of state and international travel, regardless of funding source or reimbursement by an outside agency. City Manger travel shall be approved by Mayor or designee.
5. Elected Officials must have approval of the City Council for travel expenses expected to exceed $500 per trip for meetings/conferences, unless Council members are voting delegates of organizations (i.e., Cal-Cities), in which case no prior City Council approval is required regardless of amount.

RESPONSIBILITY

Every employee who travels on official business on behalf of the City is responsible for knowing and complying with the Travel Policy. Department heads are responsible for reviewing and approving or denying all travel requests for compliance within this policy.

PROCEDURAL GUIDELINES

All employees must complete and have approved the *Advanced Travel Authorization Form* before traveling or incurring any expenses. Event brochures/agendas (if available) must accompany the form along with all anticipated expenses outlined in it. **No expenses should be incurred without prior approval via the *Advanced Travel Authorization Form*.**

After travel is completed, employees must fill out the *Travel Expense Claim Form* to accompany the *Advanced Travel Authorization Form*, with actual costs incurred. These forms must be included with every request for payment, including Cal Card receipts and Payment Requests (to vendors or employees). Detailed, itemized receipts for expenses shall be attached to the Travel Expense Claim Form for all reimbursement purposes. Receipts that are not itemized are not acceptable. Receipts are not required

for per diem meals and incidental expenses.

TRAVEL POLICY

This policy is based upon the following policies, guidelines, and protocols:

a) Human Resources Policies and Practices Manual, Section 6.1(f), Travel Time.
b) Human Resources Policies and Practices Manual, Section 9.5, Reimbursement of Expenses.
c) Human Resources Policies and Practices Manual, Section 9.6, Travel.
d) City/Fire District Governance Handbook, Section 14.2, Authorized Expenses.

Except in the case of MOU language, or specific employment agreement language, the language in this policy shall take precedence when there is any conflict between this policy and any other City policy, guidelines, and/or protocols.

The City shall provide reimbursement for expenses directly related to attendance of approved conferences, seminars, meetings, and other official functions/purposes.

Official travel should be planned, approved, budgeted, and controlled at the department level. Elected officials are subject to the guideline established in the Governance Protocol Handbook.

Generally, the number of staff attendees should be limited to the minimum necessary to accomplish the travel's purpose. However, this will not preclude any travel or other expenses associated with required or recommended training for any City employees. Such training is subject to availability of funds and approval by the appropriate department head and/or City Manager.

In the event a scheduled trip is canceled, it is the employee's responsibility to make sure all necessary arrangements have been made to cancel reservations and receive all available refunds. Failure to do so may result in directly charging the employee for the expenses incurred by the City. The City does not pay for travel insurance.

Travel Expense Categories:

Meals

1. Meals and Incidentals are combined into one rate hereby referred to as per diem. The term "incidental expenses" typically includes fees and tips given to people such as porters, baggage carriers, bellhops, hotel housekeepers, waiters, or other food service.
2. During travel, meal and incidental expenses are paid on a per diem basis. The City's rate for Meals and Incidental Expenses (M&IE) shall be equal to the U.S. General Services Administration's (GSA) M&IE rates (https://www.gsa.gov/travel/plan-book/per-diem-rates) based on the location of travel. For international travel, M&IE rates are set by the U.S. Department of State https://aoprals.state.gov/web920/per_diem.asp
3. For days that are exclusive to travel, employees are paid 75% of the applicable per diem rate.
4. Meals and/or Incidental Expenses **shall not** be purchased using the Cal Card.

Lodging

1. Lodging is allowed for out-of-town conferences and meetings. Out-of-town is defined as a location greater than one and one half (1.5) hours' drive in addition to normal commute time. Due to the frequent selection of Sacramento, CA as a conference location for many statewide organizations, Sacramento, CA is an approved destination for lodging regardless of commute time. It is the City policy to provide adequate lodging for its employees while they are out of town on approved travel. Lodging is an allowable expense for the evening preceding or following a training, meeting, or conference, when necessary, as determined by the department head. Employees must submit an itemized hotel check-out receipt to obtain reimbursement or as supporting documentation if paid with a Cal Card.
2. Lodging charges are based on standard single occupancy rates. Reimbursement will not be provided for additional lodging expenses incurred by family members when an employee's family accompanies them, or for any charges above the single occupancy rate if the hotel charges more for additional guests in the same room.
3. If lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the event, or the rate for government employees on official business. If the group or government rate is not available, lodging at comparable rates to the group rate, which do not substantially increase transportation costs or interfere with an employee's duties, are presumed to be reasonable and reimbursable.
4. If an employee extends their stay for personal reasons, they are responsible for all associated costs that exceed approved business travel. These extended travel expenses may not be charged to the Cal Card. Documentation shall be maintained to separate the business and personal travel expenses.

Transportation

1. The most economical mode of transportation, reasonably consistent with scheduling and cargo space requirements should be used, using the most direct and time-efficient route. Rail, bus, taxi, ridesharing, and airfare will be reimbursed at actual cost. Only the most economic form of travel will be authorized. All travel arrangements should be made in advance. If any employee chooses to drive instead of fly, the reimbursement shall be computed for the lesser, round-trip airfare or the actual mileage.
    a. Airfare: Only economy and coach airfare will be authorized. Reasonable baggage fees may be reimbursed. Airline early check-in fees, seat upgrades, travel insurance and other premium fees are not reimbursable. If the employee extends or modifies their travel for personal reasons, such as staying over a weekend before or after, and the cost of the airfare is greater than the necessary travel airfare, the employee is responsible for paying the difference.
    b. Rental Vehicles: Rental vehicles will only be allowed for business reasons in a situation where the hotel location is not within walking distance of the event location and a shuttle service or other means of ground transportation are not available, impractical, or too costly. Rental vehicles are only allowed as a business necessity, not for personal convenience. Rental vehicle agreements should be limited to economy, compact or

subcompact cars. Rental Car insurance must be purchased, and at the minimum level. If a portion of the trip includes personal use, such as staying over a weekend, then the employee shall pay the pro-rata cost of the rental car. Vans and other large vehicles may be rented if there is a group of employees traveling together.

c. Automobiles: Mileage expenses will be reimbursed at the actual miles traveled times the federal mileage rate when an employee uses their own vehicle for travel. The federal mileage rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating a vehicle. For employees who receive an auto allowance, mileage reimbursement will only be made in excess of 50 miles, each way of a trip.

2. When an employee operates a motor vehicle for authorized travel purposes, minimum insurance limits must be on file with Human Resources prior to travel. The driver of the vehicle is required to have the following amounts and types of insurance:
    - $100,000 Bodily Injury
    - $300,000 Each Occurrence
    - $50,000 Property Damage
3. Local/Short Distance Travel

    For local/short distance travel, City vehicles shall be used whenever practical. However, the following are instances where it is not appropriate to use a City vehicle:

    a) For trips that are in close mileage of an employee's normal commute. If the travel is more than an employee normal home-to-work commute, then the reimbursement will be for mileage that exceeds that at the IRS rate in effect at the time of travel. An exception would be if the employee is reporting to/from the work location.
    b) For those employees/officials who receive an auto allowance, if the trip is 50 miles or less each way.
    c) For trips that will take the City vehicle out of commission/use by others for more than one full day. The exception is for employees serving on standby duty and preapproved to keep a City vehicle overnight and/or emergency vehicles on official assignments.
    d) To park at an airport while the employee uses air travel to a destination.

Other Expenses

Personal expenses, including entertainment and travel insurance, are examples of items not eligible for reimbursement. All necessary expenses should be anticipated and detailed on the *Advanced Travel Authorization Form*. The following types of additional expenses are reimbursable, provided they are necessary for official business and detailed receipts are obtained:

- Baggage Charges
- Telecommunications Expenses (i.e., hotel internet)
- Toll
- Parking or Garage Fees (airport parking should be equal or less than long term rates)
- Taxis, Rideshare, or Shuttles, including a maximum 15 percent gratuity

PRE-PAID TRAVEL EXPENSES
100% of confirmed airfare, lodging, registration expense shall be paid in advance using the Cal Card or by check after the *Advanced Travel Authorization Form* has been approved. In no case shall petty cash be used for any travel advance.

POST TRAVEL REIMBURSEMENT
Employees are required to complete the Travel Expense Claim Form within 45 days of travel with detailed receipts. After 120 days, expenses paid by the City/District where receipts have not been provided shall be reported on the employee's W-2 at the end of the year, per IRS Publication 463.

TRAVEL TIME
Employees are compensated at their normal hourly rate for time committed to work-related travel, which is called travel time, as defined further in Human Resources Policies and Procedures Manual Section 6.1(f). Travel time in this policy is only applicable to employees covered by the Fair Labor Standards Act (FLSA).

For all FLSA non-exempt employees, common travel time situations are described with the following scenarios:

- Travel to and from different work or job sites.
- Travel for single day training or other activities that do not require an overnight stay.
- Time spent in meetings and/or training during approved conferences and events are considered active work time.
- If the employee is expected to work before, during or after travel, all time is compensable.
- If travel time falls on a non-working day, holiday or weekend, only travel time to and from the destination is compensated.
- Personal time spent taking breaks from travel to eat, sleep or engage in personal activities, such as sightseeing, must be excluded from travel time.
- If travel occurs on a normal scheduled workday and is less than the regular work shift, compensation is provided at a minimum of a regular work shift. Employees are expected to be available to work once settled in.
- Employees who decline to use public transportation and request permission to drive their personal vehicle instead will only be compensated for hours that would have been used for the public transportation method.

Employees who are FLSA exempt should coordinate their time appropriately with their Department Head; however, they are not eligible for compensatory time or overtime.

CITY MANAGER DISCRETIONARY EXCEPTIONS
The City Manager can make exceptions to this policy on a case-by-case basis as recommended by the department head for unusual or extenuating circumstances. Exceptions must be explained on the Advance Travel Authorization Form and signed by the City Manager.

APPENDIX G -LIST OF COUNCIL POLICIES

Fiscal and Budgetary Policies

- Basis of Accounting/Operating Budget
- Accounting, Auditing, and Financial Reporting
- Reserves, Unallocated Funds, and Capital Set-Aside
- Revenue Management
- Expenditure Control
- Investments and Cash Management
- Asset Management
- Debt Management
- Internal Controls
- Travel Policy
- Capital Set-Aside

Capital Improvement Program Policies

- Complete Streets
- Pavement Condition Index

Private Development and Economic Development Policies

- Economic Analysis of New Development
- Public Improvement Requirements & Nexus Fees
- Public Notice/Engagement
- Economic Incentives

Risk Management Policies

- Claims Review & Acceptance
- Claims Avoidance
- Insurance Requirements
- Use of Risk Pools

General

- Religious expression
- Political expression at City Events
- Flag Display at City Facilities

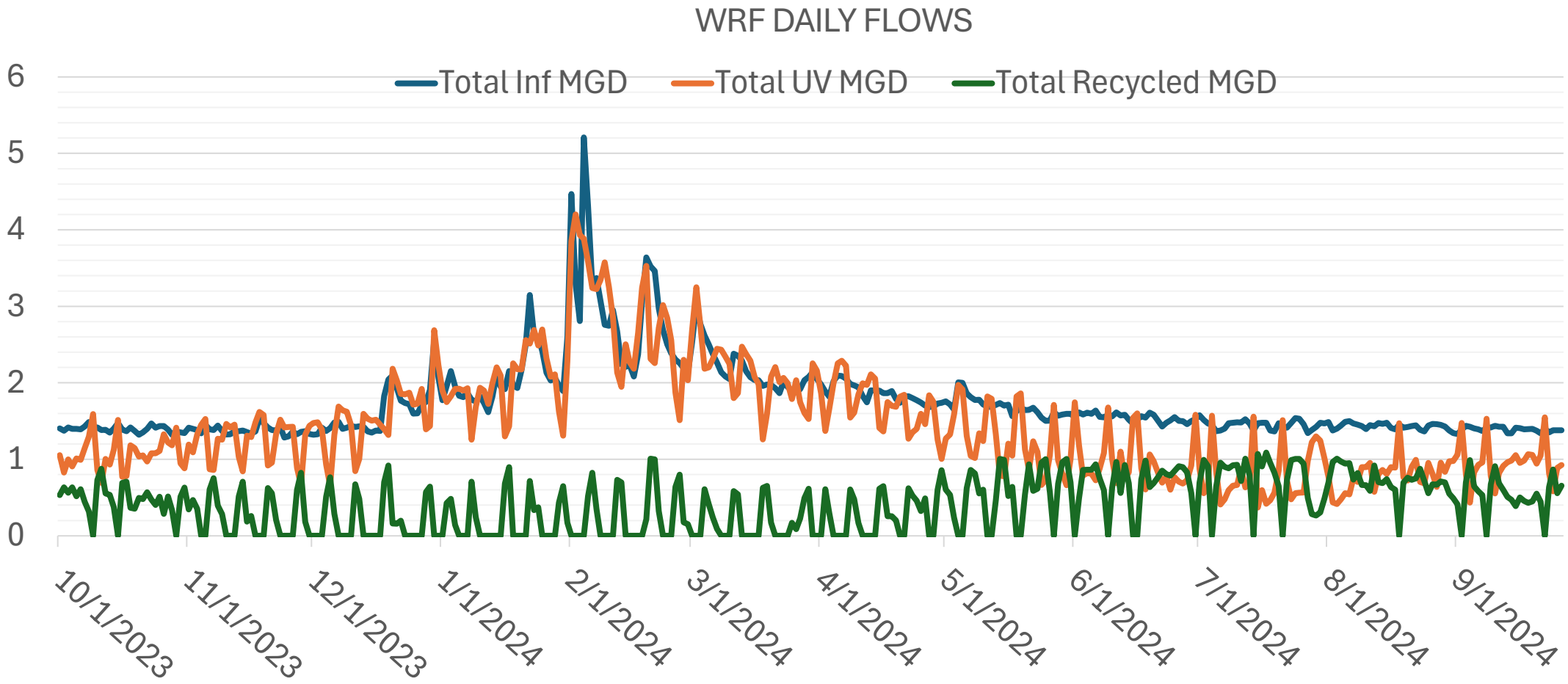
CITY OF AMERICAN CANYON

Wastewater Enterprise Update

Water Reclamation, Wastewater Collection & Maintenance Divisions

October 1, 2024

Water Reclamation Treatment and Production



WRF FACILITY MAINTENANCE

City staff removed approximately 2500 cubic yards of vegetation and sludge from the center pond to make room for approximately 500,000 gallons of wastewater

Green Island Road Pump Station Improvements

Staff solved moisture issues with the Green Road Island Pump Station through the use of a repurposed City shed structure. The moisture was causing VFD failures at an annual cost of $25,000.

General Sewer Collections Maintenance

Corp Yard Relocation Assistance

Collections assisted with a new sewer lateral installation at the new Corp Yard Office Building at Napa Junction

Other Wastewater Enterprise Activities

- Working on a complete membrane replacement proposal spread over 4 years with payment over a 5-year period through Veolia at no interest
- Replacing two existing blowers for $60,000 and not moving forward with a $500,000 retrofit project
- Decommissioning the Old Green Island Pump Station site so it can be utilized for other City use
- Ongoing monthly, quarterly and annual reporting to the State

Questions?

CITY OF AMERICAN CANYON

Questions?

Future Agenda Items

October 10, 2024, Parks and Community Services Meeting 6:30 pm
Facility Naming
Parks and Recreation Refund Policy

October 15, 2024, Regular City Council Meeting 6:30 pm
Proclamation - Domestic Violence Awareness Month (NEWS)
Proclamation - Veterans Day
Quarterly Investment Report
FY 24/25 Capital Improvement Plan Q2 Update
First Reading of Ordinance for Governance Protocols and Code of Conduct
Newell Drive Extension Next Steps * *Council requested item*
Green Island Road Project Phase 2 Contract Award

October 24, 2024, Planning Commission Meeting 6:30 p.m.
Commerce 220 Warehouse (Recommendation)
General Plan EIR Workshop
Watson Ranch Lot 7 Design Permit and Tentative Subdivision Map (Recommendation)

November 5, 2024, Regular City Council Meeting – CANCELLED DUE TO MUNICIPAL ELECTION

November 6, 2024, OSATS Commission 6:30 p.m.
Countywide Bike Plan (NVTA)
Bicycle Friendly Community Application

November 14, 2024, Parks and Community Services Meeting. 6:30 p.m.
Update Municipal Code for Skatepark Use

November 19, 2024, Regular City Council Meeting. 6:30 p.m.
Proclamation Honoring Mayor Garcia
Proclamation Honoring Mariam Aboudamous
Quarterly Investment Report
Commerce 220 Warehouse
Watson Ranch Lot 7 Design Permit and Tentative Subdivision Map
South Kelly & SR 29 Intersection Project

November 21, 2024, Planning Commission Meeting. 6:30 p.m. - Special Date Due to Holiday
Crawford Way Apartment Townhome Design Permit

December 3, 2024, Regular City Council Meeting. 6:30 p.m.
Certify November Election Results and Oath of Office

December 3, 2024, Regular City Council Meeting (New Council)
2025 Council Meeting Calendar
Selection of Mayor and Vice Mayor Positions and 2025 City Council Committee Assignments
Annual List of Proclamations

December 4, 2024, OSATS Meeting. 6:30 p.m.
Presentation on MCE Deep Green (MCE)
Presentation on Habitat Conservation Plan 101
Jaeger Open Space Acquisition

December 12, 2024, Parks and Community Services Meeting. 6:30 p.m.

December 17, 2024, Regular City Council Meeting. 6:30 p.m.
Local Appointments List - Maddy Act Compliance
FY 2023-24 Auditors Report
Metropolitan Transportation Commission (MTC) Nomination
Green Island Road Project Construction Contract
Rancho Del Mar Paving and Utility Improvements

December 19, 2024, Planning Commission Meeting. 6:30 p.m. - Special Date Due to Holiday

Unscheduled Council Requested Items	Councilmember	Date of Council Vote	Notes
Review and File American Canyon History Report	Washington	7/18/2023	In progress, council date TBD
Revisit Alignment of West Side Connector	Joseph	10/17/2023	On hold pending General Plan update.
All Electric Reach Code (Discussion only)	Joseph	11/7/2023	On hold pending RCAAP and *Berkeley* litigation.
Food Ware Ordinance	Joseph	09/17/2024	In progress, council date TBD