



## REGULAR CITY COUNCIL MEETING AGENDA

City Hall - Council Chambers  
4381 Broadway St., Suite 201, American Canyon  
**October 15, 2024**  
**6:30 PM**

**Mayor:** Leon Garcia

**Vice Mayor:** David Oro

**Councilmembers:** Mariam Aboudamous, Mark Joseph, Pierre Washington

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**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:** 849 9699 3806; **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@americancanyon.gov](mailto:cityclerk@americancanyon.gov).

**AGENDA MATERIALS:** City Council agenda materials are published 72 hours prior to the meeting and are available to the public via the City's website at [www.americancanyon.gov](http://www.americancanyon.gov).

**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@americancanyon.gov](mailto:cityclerk@americancanyon.gov). 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.* (Third District Court of Appeal Case No. C102070; formerly 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 - Domestic Violence Awareness Month**

4. **Proclamation - Veterans Day 2024**

5. **Oath of Office for Assistant Public Works Director Norman Woods**

6. **Appointment of Youth Commissioners**

**Recommendation:** Appoint by minute order Youth Commissioners: Ramandeep Kaur Jawanda to the Planning Commission, Heather Mora to the Parks and Community Services Commission, and Calix Joel Delos Santos Mintalar to the Open Space, Active Transportation, and Sustainability Commission; and direct the City Clerk to administer an Oath of Office to the Youth Commissioners.

**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**

7. **Minutes of October 1, 2024**

**Recommendation:** Approve the minutes of the Regular City Council Meeting of October 1, 2024.

8. **Report Upon Return from Closed Session**

**Recommendation:** Approve the Report Upon Return from Closed Session for the Regular City Council meeting of October 1, 2024.

9. **Oat Hill Final Map**

**Recommendation:** Adopt a Resolution taking the following actions in conjunction with the Oat Hill Multi Family Residential Project:

1. Amend the two Final Maps approved under Resolution 2022-32; and
2. Approve the revised Final Maps to subdivide the Property for development of 291 residential condominium units and associated amenities on Parcels 1 & 2 and to accept the referenced dedications offered thereon.

10. **Adoption of Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection**

**Recommendation:** Adopt Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection

11. **Renegotiated Administrative Service Agreement with MissionSquare Retirement**  
**Recommendation:** Adopt a Resolution approving a renegotiated Administrative Service Agreement with MissionSquare Retirement.

12. **Water Reclamation Facility Membrane Replacement**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a purchase agreement with Veolia Water Technologies and Solutions for the procurement of eight hundred ninety-six (896) "ZW500D RX12 430 ft<sup>2</sup>" membrane modules, twelve (12) ZW500D LEAPmbr 16M cassette frames, and associated materials for existing cassette refurbishment and LEAPmbr upgrade, for use at the Water Reclamation Facility for a total cost of \$3,121,330 and amending the Fiscal Year 2024/25 budget to increase Wastewater Operations Fund 540 by \$422,087 and Wastewater Capacity Fee Fund 550 by \$202,179 to account for the current Year 1 membrane cost of \$624,266.

## **PUBLIC HEARINGS**

13. **City Council Code of Conduct and Governance Protocols**  
**Recommendation:** Waive first reading and introduce by title only an ordinance modifying American Canyon Municipal Code Chapter 2.04.050 "Adoption of procedures." to establish a City Council Code of Conduct and Governance Protocols.

## **BUSINESS**

14. **Newell Drive Extension**  
**Recommendation:** Receive and file and update on the extension of Newell Drive.

## **MANAGEMENT AND STAFF ORAL REPORTS**

15. **Q2 FY24/25 Capital Project Schedule Update**  
**Recommendation:** Informational item with City Council feedback

## **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**

16. **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.

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Taresa Geilfuss, CMC, City Clerk



# CITY OF AMERICAN CANYON PROCLAMATION



## ***Domestic Violence Awareness Month – October 2024***

WHEREAS, NEWS, Domestic Violence and Sexual Abuse Services is commemorating 43 years of service to survivors of domestic violence (DV) in Napa County, having opened the first confidential safe house on October 5<sup>th</sup>, 1981, and began providing safety to those escaping abuse; and

WHEREAS, every year since 1989, the United States Congress has proclaimed October as Domestic Violence Awareness Month (DVAM), renewing our Country’s commitment to standing against domestic violence and meeting the needs of survivors; and

WHEREAS, DVAM is about raising awareness and uplifting the needs, voices and experiences of survivors. This year’s national campaign of “Heal, Hold & Center” calls on us to ponder how our community is helping to heal, holding space for, and centering the voices of marginalized survivors; and

WHEREAS, DV is a public health concern that impacts the well-being and success of individual community members, as well as the community as a whole. Data shows that nearly 1 in 3 women and 1 in 4 men in the U.S. report experiencing severe physical violence from an intimate partner in their lifetime while nearly half of U.S. adults have experienced psychological aggression such as humiliating or controlling behaviors from their partner. DV can cause severe physical and emotional distress for survivors who are more likely to become suicidal and lose economic opportunities from the abuse. Children who witness abuse are likely to experience abuse themselves and are often used to control other family members which can have lifelong impacts on their mental health. Aside from the obvious physical and emotional trauma inflicted, DV contributes to over 10% of all intentional violent deaths (not including suicide) and costs America over 8 billion dollars a year; and

WHEREAS, by observing October as DVAM we show that our community is committed to supporting survivors and working toward the prevention of DV among future generations; and

WHEREAS, in Fiscal Year 2023/2024 NEWS provided services to over 1,700 of our Napa County community members, including 24-hour response, assistance with protective orders, safety and shelter, permanent housing, financial aid, support groups and children’s services, for issues related to violence in the home; and

NOW, THEREFORE LET IT BE RESOLVED THAT I, Leon Garcia, Mayor, on behalf of the City Council of the City of American Canyon, do hereby proclaim October 2024 as “Domestic Violence Awareness Month”, and encourage all residents of American Canyon to honor domestic violence survivors and those who serve them during this month and throughout the year.

Dated: September 17, 2024

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Leon Garcia, Mayor

# CITY OF AMERICAN CANYON PROCLAMATION



## Veterans Day, 2024

**WHEREAS**, November 11<sup>th</sup> is the anniversary of the armistice signed by the Allies and the Germans in 1918, which ended World War I after four years of conflict. President Woodrow Wilson issued the first Armistice Day proclamation in November of 1919, and set the tone for further observances; and

**WHEREAS**, the name changed from Armistice Day to Veterans Day by an act of Congress in 1954, when President Eisenhower called on citizens to observe the day in honor of all who had served in America's wars through the years; and

**WHEREAS**, the City of American Canyon recognizes the significant and lasting contributions made by our veterans, who have dedicated their lives to the service of our great nation; and

**WHEREAS**, the history of the United States is rich with the deeds of those American Canyon residents who have served in our Armed Forces with honor and distinction; and

**WHEREAS**, today we recognize these courageous men and women who represent the best our nation and community have to offer and, with their service, these veterans have proven that America's freedoms are worth protecting; and

**WHEREAS**, our community is deeply grateful for the sacrifices made by our veterans and their families, and we will continue to work tirelessly to ensure that they receive the care, support, and respect they deserve; and

**WHEREAS**, we invite the American Canyon community to join us in honoring the brave men and women who have served our country at the Veterans Day Ceremony on November 11, 2024. The ceremony will take place at 11:00 a.m. in the American Canyon Middle School Gymnasium. Together, we proudly recognize and pay tribute to the veterans of the past, present, and future.

**NOW, THEREFORE, BE IT RESOLVED** that I, Leon Garcia, Mayor of the City of American Canyon, on behalf of the City Council, do proclaim November 11, 2024, as Veterans Day in American Canyon.

Dated: October 15, 2024

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Mayor Leon Garcia

Name	Commission You are Applying For:	1. Tell us about yourself and why you want to be a Youth Commissioner:	2. Why should we select you over the other candidates?	3. What would you like to accomplish while serving as a Youth Commissioner?	4. What is your vision for the future of American Canyon?	5. Is there anything else you would like to us to consider when reviewing your application?
Heather Mora	Parks & Community Services Commission	<p>I am an enthusiastic and committed individual currently serving as a leader for freshmen, where I focus on helping new students acclimate to high school life. In addition to this role, I hold leadership positions in two clubs, which have provided me with valuable experience in teamwork, organization, and event planning. I have a strong passion for creating engaging activities that foster community and connection among my peers.</p> <p>I want to be a Youth Commissioner for the city because I believe in the power of youth voices in shaping our community. I am eager to advocate for the needs and interests of young people. My love for planning and organizing events will enable me to develop initiatives that address the issues facing our youth, from mental health support to educational opportunities. I am excited about the opportunity to collaborate with city leaders and fellow youth to create a positive impact and make our city a better place for all residents.</p>	<p>I am excited to apply for a position on The Parks and Community Services Commission, as I am deeply passionate about enhancing our community's recreational spaces and programs. My experience as a leader for freshmen has instilled in me the importance of fostering a welcoming and inclusive environment, which I believe is essential for the effective use and development of our parks and recreational facilities.</p> <p>In my leadership roles within two clubs, I have successfully organized activities that promote community engagement and encourage students to be part of the community that we have here in American Canyon. I am particularly interested in advocating for programs that not only enhance recreational opportunities but also emphasize the importance of confronting issues within the community.</p> <p>I understand that the Commission plays a vital role in advising the City Council on park development and recreation programming. I am eager to contribute my insights and ideas to ensure that our parks are accessible, well-maintained, and equipped to meet the diverse needs of our community. My passion for planning and organizing events will enable me to help create engaging recreational programs that bring people together and promote a healthy, active lifestyle.</p> <p>By serving on The Parks and Community Services Commission, I hope to work collaboratively with fellow members and the City Council to enhance our community's parks and recreational offerings, ensuring they are vibrant spaces that foster connection, well-being, and enjoyment for all residents. Thank you for considering my application.</p>	<p>As a candidate for The Parks and Community Services Commission, I am eager to enhance our community's parks and recreational facilities by advocating for improved accessibility and inclusive programming that caters to all residents. My goal is to promote community engagement through events that encourage the use of our parks, while also supporting sustainable development practices that protect our natural resources. I believe in the importance of involving youth in the planning process to ensure that their interests are represented, fostering a sense of ownership and responsibility among the younger generation. By addressing gaps in recreation programming and gathering community feedback, I aim to develop initiatives that reflect the diverse needs of our residents, ultimately contributing to a vibrant and connected community. Thank you for considering my application.</p>	<p>My vision for the future of American Canyon is to create a vibrant, inclusive, and sustainable community that prioritizes the well-being of its residents while preserving the natural beauty of the area. I envision a city where parks and recreational facilities are accessible to all, providing diverse programming that encourages active lifestyles, community engagement, and social connection.</p> <p>I see American Canyon as a place where youth voices are valued and integrated into decision-making processes, fostering a sense of ownership and responsibility among the younger generation. Additionally, I envision enhanced green spaces and environmentally sustainable practices that promote conservation and protect our local ecosystems.</p> <p>Furthermore, I aspire to see a strong sense of community pride, where residents actively participate in local events and initiatives, strengthening relationships and collaboration among neighbors. By focusing on these key areas, I believe we can build a thriving American Canyon that meets the needs of all its residents while ensuring a bright and sustainable future.</p>	<p>In addition to my qualifications and vision for the role, I would like you to consider my deep commitment to community service and my proactive approach to problem-solving. I have consistently sought opportunities to engage with my peers and the broader community, through organizing events that promote kindness and inclusivity. My ability to listen to diverse perspectives and collaborate effectively with others will enable me to represent the interests of our community thoughtfully and effectively. I am passionate about making a positive impact and am eager to bring my energy, creativity, and dedication to The Parks and Community Services Commission. Thank you for considering my application; I look forward to the opportunity to contribute to the future of American Canyon.</p>
Ramandeep Kaur Jawanda	Any Available Commission	<p>My name is Ramandeep Kaur Jawanda. I have been living in American Canyon through out my high school years. I am a senior at ACHS. I have seen the potential for this city to have a value for its residents and its population. As of this time this city has been the most underserved 21,432 residents. As growing city there's a potential economic opportunity for the residents of American Canyon. I want to help grow this city into a thriving community of diverse people.</p>	<p>The reason why you should select me over the other candidates because I want to improve on youth engagement and infrastructure. What I mean by that is providing youth with positive activities including sports, arts, tutoring and other educational programs to keep them engaged and away from potentially harmful effects on our community because a growing community comes with a lot of responsibilities and with that comes growth in aspects such as crime.</p>	<p>I would like to accomplish a growing community with activities for youth development for their learning abilities because of the troubles they see and struggles they face with</p>	<p>My vision for the future of American Canyon is having open sources for works, education programs for those who need them. Providing fundraiser for sheriff department, firefighters advocate a positive and safe environment.</p>	<p>I want you to consider when reviewing my application that people with different disabilities can have a chance to improve on themselves with different programs that we will provide for the community.</p>
Calix Joel Delos Santos Mintalar	Any Available Commission	<p>My name is Calix Joel Delos Santos Mintalar, but my nickname is CJ. I attend American Canyon High School, and I want to broaden my help from school-wide to community-wide matters. Volunteering for numerous community events, like the Tree Lighting, Reindeer Run, Wetlands Beautification, etc. I came to realize how beautiful this community is. Everyone is so very close and loving, it makes American Canyon the safe and comfortable environment it is today. Taking further initiative, I want to apply my thoughts and be able to voice out possible ways to help this community even more!</p>	<p>Working hard at American Canyon High School, I integrate my abilities through Leadership helping plan out school-wide and community-wide events like Homecoming, AC's Night Out, and Trunk or Treat, I spend a lot of my time after school volunteering and making these events come to life. In addition, I also had experience working with younger ages through Link Crew, an organization in American Canyon High that helps make incoming Freshmen comfortable with their new environment. That includes creating events, playing games, and simply helping them around campus. These qualities and skills that I have acquired can help me as a Youth Commissioner, providing me with the appropriate skills and knowledge to further ensue a greater community in American Canyon.</p>	<p>I would like to make a difference, somehow. More specifically I want to make our community thrive. The open spaces, the wetlands trails, the various food trucks; I want to make sure everyone is content and happy where they are. Maintaining peace and maybe acquiring more environmentally friendly opportunities, I want our community to be beautiful in it's own way. One idea may be the revitalization of our community garden across from Gladwell Park.</p>	<p>In the future, I envision a community where everyone is heard and has an opportunity. In AC, everyone should be able to jumpstart a business, or be able to show off what they love. Even more specific, we could put more emphasis on those who work hard every day, like an appreciation day for anyone who deserves it. In summary, the future of American Canyon is full of kindness and possibility. Moreover, with beautiful trees and flowers, I believe that American Canyon greenery could bring out more people to walk and bike. There are numerous trails and sidewalks that people can use every day! Seeing people walking their pets, riding bikes, or simply walking is another vision of mine for American Canyon.</p>	<p>Living in American Canyon as a citizen for almost my entire life, I found it a very comfortable and amazing place. Attending American Canyon High School, or simply walking around town with my friends, I can visually see this community's safety and prettiness. Attending various social events, I have taken in the comforting environment American Canyon creates with all its citizens. Small businesses are being promoted, and there are attractions for everyone and countless ways for everyone to love and have fun with each other in this environment. Becoming a Youth Commissioner would be an amazing opportunity, putting my foot forward to help this lovely community I strive for the goodness of this town and my input on the amazing things yet to come!</p>

**CITY OF AMERICAN CANYON  
REGULAR CITY COUNCIL MEETING**

**ACTION MINUTES**

*October 1, 2024*

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**5:30 P.M. – CLOSED SESSION**

**CALL TO ORDER - CLOSED SESSION**

The City Council meeting was called to order at 5:32 p.m.

**ROLL CALL - CLOSED SESSION**

**Present:** Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia

**Absent:** None

**Excused:** Councilmember Mariam Aboudamous, Councilmember Mark Joseph

**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**

**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.

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).

## **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 6:33 p.m.

### **PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited.

### **ROLL CALL - OPEN SESSION**

**Present:** Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia

**Absent:** None

**Excused:** Councilmember Mariam Aboudamous, Councilmember Mark Joseph

### **REPORT ON CLOSED SESSION/CONFIRMATION OF REPORTABLE ACTION**

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

## **PROCLAMATIONS AND PRESENTATIONS**

### **3. Proclamation - Filipino Heritage Month**

Mayor Garcia announced the Filipino Heritage Month proclamation. It was received by President Jodl Cruz and other members of Fil-am American Canyon.

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

Mayor Garcia announced the proclamation. It was received by Community Development Director Brent Cooper and Code Enforcement Officer Tiffany Ford.

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

Mayor Garcia announced the proclamation. It was received by Planning Commissioner Brando Cruz, Planning Commissioner Davet Mohammed, Community Development Director Brent Cooper, Senior Planner William He, Deputy City Clerk Nicolle Hall, Code Enforcement Officer Tiffany Ford and Permit Technician Laura Welch.

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

Mayor Garcia called for public comments. Written comments: none. Oral comments: Melissa Lamattina was called to speak; Justin Hamilton Hole 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 CONSENT CALENDAR made by Councilmember Pierre Washington, seconded by Vice Mayor David Oro, and CARRIED by roll call vote.

**Ayes:** Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia

**Nays:** None

**Abstain:** None

**Excused:** Councilmember Mariam Aboudamous, Councilmember Mark Joseph

### 6. Minutes of September 17, 2024

**Action:** Approved the minutes of the Regular City Council meeting of September 17, 2024.

### 7. Report Upon Return from Closed Session

**Action:** Approved 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

**Action:** Adopted Resolution 2024-73 authorizing the City Manager to execute Amendment #3 (Agreement 2024-A145) to Agreement No. 2022-A148 with Robert Half International Inc.

## PUBLIC HEARINGS

### 9. Oat Hill Multifamily Residential Major Modification

Council received an Oat Hill Multifamily Residential Major Modification staff report from Community Development Director Brent Cooper. Mayor Garcia opened the public hearing and called for public comments. Written comments: none. Oral comments: none. Public comments and the public hearing were closed.

**Action:** Motion to adopt Resolution 2024-74 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) made by Vice Mayor David Oro, seconded by Councilmember Pierre Washington, and FAILED by roll call vote.

**Ayes:** Councilmember Pierre Washington, Vice Mayor David Oro

**Nays:** Mayor Leon Garcia

**Abstain:** None

**Excused:** Councilmember Mariam Aboudamous, Councilmember Mark Joseph

Council recessed at 7:47 p.m.

Council reconvened at 7:50 p.m.

**Action:** Motion to adopt Resolution 2024-74 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) made by Vice Mayor David Oro, seconded by Councilmember Pierre Washington, and CARRIED by roll call vote.

**Ayes:** Councilmember Pierre Washington, Vice Mayor David Oro, Mayor Leon Garcia

**Nays:** None

**Abstain:** None

**Absent:** Councilmember Mariam Aboudamous, Councilmember Mark Joseph

**Excused:** None

## **BUSINESS**

### **10. City Council Code of Conduct and Governance Protocols**

Council received a City Council Code of Conduct and Governance Protocols 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. No action was taken on this item.

## **MANAGEMENT AND STAFF ORAL REPORTS**

### **11. Wastewater Enterprise Update**

Council received a Wastewater Enterprise Update presentation from Public Works Director Erica Ahman Smithies.

Council received oral updates from Parks & Recreation Director Alexandra Ikeda and Community Development Director Brent Cooper.

## **MAYOR/COUNCIL COMMENTS AND COMMITTEE REPORTS**

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

## **FUTURE AGENDA ITEMS**

### **12. Future Agenda Items of Note**

## **ADJOURNMENT**

The meeting was adjourned at 8:50 p.m.

## **CERTIFICATION**

Respectfully Submitted,

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Taresa Geilfuss, City Clerk



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

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File No: 199/6

October 3, 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 October 1, 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 October 1, 2024, consistent with Government Code Section 54957.1.

Mayor Garcia convened the Council<sup>1</sup> in Open Session at 5:32 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 5:32 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)  
Three (3) 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);

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<sup>1</sup> Mayor Garcia, Vice Mayor Oro and Council Member Washington being present. Council Members Joesph and Aboudamous were excused.

- 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].

With respect to the three (3) 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).

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).

Your Council concluded the Closed Session at 6:11 p.m.

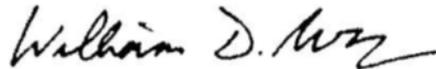
In Open Session, it was indicated that a written report upon return from Closed Session consistent with Government Code Section 54957.1, would be prepared concerning the matters agendized for Closed Session.

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

The Honorable Leon Garcia, Mayor  
and Members of the City Council  
October 3, 2024  
Page 3

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,

A handwritten signature in black ink, appearing to read "William D. Ross". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

William D. Ross  
City Attorney

WDR:jf

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



## **TITLE**

Oat Hill Final Map

## **RECOMMENDATION**

Adopt a Resolution taking the following actions in conjunction with the Oat Hill Multi Family Residential Project:

1. Amend the two Final Maps approved under Resolution 2022-32; and
2. Approve the revised Final Maps to subdivide the Property for development of 291 residential condominium units and associated amenities on Parcels 1 & 2 and to accept the referenced dedications offered thereon.

## **CONTACT**

Erica Ahmann Smithies, P.E., Public Works Director  
Edison Bisnar, P.E., Senior Civil Engineer

## **BACKGROUND & ANALYSIS**

Developer is the owner of certain real property comprised of approximately 20.8 acres on two parcels (Parcel 1 and parcel 2) and located southwest of the Napa Junction Road and Hess Road intersection in the City of American Canyon, California (APNs 058-380-008 and 058-320-001).

On May 3, 2022, the City Council of the City of American Canyon approved City Council Resolution 2022-32. The Resolution approved: 1) two Final Maps to subdivide Oat Hill Property into two parcels; 2) a subdivision improvement agreement; and 3) a reimbursement agreement (See Exhibit A.) The approved Final Maps were preliminary and were never recorded.

On September 9, 2024, the applicant submitted two revised Final Maps for Parcel 1 and Parcel 2. The revised Final Maps differ from the approved Final Maps, showing more public utility easements, an emergency vehicle easement, a public access easement and change of ownership (See Exhibit B.)

Staff recommends the City Council to 1) amend the two Final Maps approved under Resolution 2022-32; and 2) approve the revised Final Maps to subdivide the Property for development of 291 residential condominium units and associated amenities on Parcels 1 & 2 and to accept the referenced dedications offered thereon.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Not applicable.

## **FISCAL IMPACT**

There is no fiscal impact associated with the proposed action.

## **ENVIRONMENTAL REVIEW**

Consistent with the California Environmental Quality Act, the Oat Hill Multifamily Residential Project entitlements were evaluated in the Oat Hill Mitigated Negative Declaration (SCH #2021020107) ("MND") and Mitigation Monitoring Report ("MMRP") approved September 7, 2021 (Resolution 2021-61). There have not been any substantial changes with respect to the circumstances under which implementation of the Project would be undertaken that would require major revisions to the previously adopted MND and MMRP. In addition, there is no new information of substantial importance, which was not known and could not have been known at the time that the MND and MMRP was approved showing that there are new or more severe environmental impacts not addressed in MND and MMRP. Therefore, no further environmental review is required.

## **ATTACHMENTS:**

1. [Resolution - Oat Hill Final Map](#)
2. [Exhibit A](#)
3. [Exhibit B](#)

**RESOLUTION NO. 2024-**

**ADOPT A RESOLUTION TAKING THE FOLLOWING ACTIONS IN CONJUNCTION WITH THE OAT HILL MULTIFAMILY RESIDENTIAL PROJECT: 1) AMEND THE TWO FINAL MAPS APPROVED UNDER RESOLUTION 2022-32; AND 2) APPROVE THE REVISED FINAL MAPS TO SUBDIVIDE THE PROPERTY FOR DEVELOPMENT OF 291 RESIDENTIAL CONDOMINIUM UNITS AND ASSOCIATED AMENITIES ON PARCELS 1 & 2 AND TO ACCEPT THE REFERENCED DEDICATIONS OFFERED THEREON.**

**WHEREAS**, Developer is the owner of certain real property comprised of approximately 20.8 acres on two parcels (Parcel 1 and parcel 2) and located southwest of the Napa Junction Road and Hess Road intersection in the City of American Canyon, California (APNs 058-380-008 and 058-320-001); and

**WHEREAS**, on May 3, 2022, the City Council of the City of American Canyon passed CC Resolution 2022-32. The Resolution approved: 1) two Final Maps to subdivide Oat Hill Property into two parcels; 2) subdivision improvement agreement; and 3) reimbursement agreement. The approved Final Maps were preliminary and was never recorded; and

**WHEREAS**, on September 9, 2024, the applicant submitted the revised Final Maps for Oat Hill Multifamily project Parcel 1 and Parcel 2. The revised Final Maps differ from the approved Final Maps, in showing more public utility easements, an emergency vehicle easement, a public access easement and change of ownership.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of American Canyon hereby 1) amend the two Final Maps approved under Resolution 2022-32; and 2) approve the revised Final Maps to subdivide the Property for development of 291 residential condominium units and associated amenities on Parcels 1 & 2 and to accept the referenced dedications offered thereon.

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 15th day of October 2024, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVE AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney

**RESOLUTION NO. 2022-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON TAKING THE FOLLOWING ACTIONS IN CONJUNCTION WITH THE OAT HILL MULTIFAMILY RESIDENTIAL PROJECT: 1) APPROVING TWO FINAL MAPs TO SUBDIVIDE THE PROPERTIES (PARCELS A, AND B, ASSESSOR'S PARCEL NUMBERS 058-380-008 and 058-320-001) TO CREATE 291 RESIDENTIAL UNITS AND ASSOCIATED AMENITIES; 2) APPROVING A SUBDIVISION IMPROVEMENT AGREEMENT; AND 3) APPROVING A FEE REIMBURSEMENT AGREEMENT.**

**WHEREAS**, Developer is the owner of certain real property comprised of approximately 20.8 acres on two parcels (Parcel A and Parcel B) and located southwest of the Napa Junction Road and Hess Road intersection in the City of American Canyon, California (APNs 058-380- 008 and 058-320-001); and

**WHEREAS**, on August 17, 2020, Developer submitted entitlement applications for the development of 291 residential units and associated amenities on Parcels A and B (the "Project" or "Oat Hill Multifamily Residential Project"); and

**WHEREAS**, on September 21, 2021, the City Council approved General Plan Amendments and Rezones to re-designate Parcel A as Residential High Density, 16 dwelling units per acre (RH-1), rezone Parcel A to Residential High Density (RH), redesignate Parcel 8 as Residential Medium Density, 12 dwelling units per acre (RM), and rezone Parcel 8 to Residential Medium Density (RM), as well as approved Tentative Maps and Design Permits and certified an Initial Study/Mitigated Negative Declaration, among other approvals (collectively, the "Project Approvals") pursuant to Ordinance Nos. 2021-05 and -06 and Resolution Nos. 2021-61, -62, -63, -64, -76, -77, -78, and -79; and

**WHEREAS**, two Final Maps entitled "Final Map for Condominium Purposes" for Parcel A (entitled Parcel 1 on the Map) and for Parcel B (entitled Parcel 2 on the Map) have been prepared and submitted to the City of American Canyon for approval (attached hereto as Exhibits A and B and incorporated herein); and

**WHEREAS**, the Final Maps include the offer of dedication of the right-of-way for public access easement, emergency vehicle access easement, and public utility easement; and

**WHEREAS**, a duly noticed public hearing was held September 21, 2021 for the Oat Hill Multifamily Residential Project entitlements were evaluated in the Oat Hill Mitigated Negative Declaration (SCH #2021020107) and Mitigation and Monitoring Report approved September 7, 2021 (Resolution 2021-61).; and

**WHEREAS**, the Developer has agreed to enter into a Subdivision Improvement Agreements for the Project (attached hereto as Exhibit C and incorporated herein), for completion of all remaining requirements of the development, including financial securities to guarantee that the work is completed; and

**WHEREAS**, final approval of the Subdivision Improvement Agreement the Project will not become effective until the City acceptance of the Agreements Improvement Plans; and

**WHEREAS**, City Municipal Code section 13.06.110 authorizes the City to enter into fee credit and fee reimbursement agreements for the construction of off-site or oversized improvements to the City's water or sewer system. City Council Resolution Nos. 2021-76, -77, -78, and -79, approving the Project Tentative

Maps and Design Permits, provide that certain other water and road infrastructure improvements constructed by Developer qualify for fee credits and fee reimbursement for the costs of such improvements. To that end, the Applicant has proposed to construct certain eligible water, sewer, recycled water, and road improvements as part of the Project that would otherwise be financed by City fees and rates and built by the City; and

**WHEREAS**, the Parties have agreed to enter into a Fee Credit Reimbursement Agreement that provides for the allocation of certain fee credits and fee reimbursement for the costs of such improvements. (Attached as Exhibit D). As set forth in the Fee Credit Reimbursement Agreement, the Applicant will construct improvement projects in accordance with the Subdivision Improvement Agreement. As consideration for the applicant constructing certain additional improvements, the City will allow certain fee credits to be provided to the applicant for specific projects.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of American Canyon hereby approves the Final Maps for the Oat Hill Multifamily Residential Project Parcel A and Parcel B (APNs 058-380- 008 and 058-320-001); and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon hereby authorizes the City Manager to enter into a Subdivision Improvement Agreement pending City approval of the Improvement Plans; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon hereby accepts the dedication of public access easement, emergency vehicle access easement, and public utility easement offered thereon.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon hereby authorizes the City Manager to enter into a Fee Credit Reimbursement Agreement pending City approval of the Improvement Plans.

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 3<sup>rd</sup> day of May, 2022, by the following vote:

AYES: Councilmembers Joseph, Oro, Washington, and Mayor Garcia  
NOES: None  
ABSTAIN: None  
ABSENT: Vice Mayor Aboudamous

DocuSigned by:  
*Leon Garcia*  
BA1BB3340DAC47C...  
Leon Garcia, Mayor

ATTEST:

DocuSigned by:  
*Taresa Geilfuss*  
669347683BC94DC...  
Taresa Geilfuss, City Clerk

APPROVED AS TO FORM:

*William D. Ross*  
William D. Ross, City Attorney

Attachments:

- Exhibit A – Oat Hill Final Map Parcel A
- Exhibit B – Oat Hill Final Map Parcel B
- Exhibit C – Subdivision Improvement Agreement
- Exhibit D – Fee Credit Reimbursement Agreement

## OWNER'S STATEMENT

THE UNDERSIGNED, OAT HILL PROPERTIES II, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, HEREBY STATES THAT THEY ARE THE ONLY ENTITIES HAVING RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION HEREON ENTITLED "FINAL MAP PARCEL ONE" CONSISTING OF 3 SHEETS; THAT IT DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS A NON-EXCLUSIVE EASEMENT FOR PUBLIC PURPOSES:

1. "PUBLIC UTILITY EASEMENT" OR "PUE" IS RESERVED FOR THE PURPOSED OF PUBLIC UTILITIES ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.
2. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.

WE HEREBY RESERVE A "PRIVATE STORM DRAIN EASEMENT" OR "PSDE" FOR THE PURPOSE OF STORM WATER DRAINAGE FACILITIES AND APPURTENANCES THERETO ON, ACROSS, AND OVER THOSE DESIGNATED AREAS. SAID EASEMENT IS FOR THE BENEFIT OF PARCEL 2 OF LOT LINE ADJUSTMENT \_\_\_\_\_.

OAT HILL PROPERTIES II, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY:

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
 NAME: \_\_\_\_\_ NAME: \_\_\_\_\_  
 TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
 COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
 COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## RECORDER'S STATEMENT

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 201 \_\_\_\_\_, AT \_\_\_\_\_ .M., IN BOOK \_\_\_\_\_ OF RECORD MAPS AT PAGES \_\_\_\_\_ THROUGH \_\_\_\_\_, INCLUSIVE, COUNTY OF NAPA,

STATE OF CALIFORNIA, AT THE REQUEST OF THE CITY OF AMERICAN CANYON.

FILE NO. \_\_\_\_\_ FEES: \_\_\_\_\_

JOHN TUTEUR  
 COUNTY RECORDER IN AND FOR THE COUNTY  
 OF NAPA, STATE OF CALIFORNIA.

DEPUTY COUNTY RECORDER  
 COUNTY OF NAPA  
 STATE OF CALIFORNIA

# FINAL MAP OF PARCEL 1 FOR CONDOMINIUM PURPOSES

CONSISTING OF 3 SHEETS  
 BEING A SUBDIVISION OF PARCEL 1 AS DESCRIBED IN THAT  
 CERTIFICATE OF COMPLIANCE FOR LOT ADJUSTMENT RECORDED AS  
 DOCUMENT NUMBER \_\_\_\_\_, NAPA COUNTY RECORDS  
 APN: 058-380-008-000, 1 PARCEL, 13.60 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



SAN RAMON • (925) 866-0322  
 ROSEVILLE • (916) 788-4456  
 WWW.CBANDG.COM

CIVIL ENGINEERS • SURVEYORS • PLANNERS  
 APRIL 2022

**CITY ENGINEER'S STATEMENT**

I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION, THAT IT IS SUBSTANTIALLY THE SAME AS THE TENTATIVE PARCEL MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY ORDINANCES APPLICABLE AT THE TIME OF APPROVAL HAVE BEEN COMPLIED WITH.

NAME: \_\_\_\_\_  
 ERICA AHMANN SMITHIES  
 CITY ENGINEER, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA  
 RCE 65468

DATE: \_\_\_\_\_



I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

NAME: \_\_\_\_\_  
 RICHARD A. MOSHER  
 STATE OF CALIFORNIA  
 RCE 30696

DATE: \_\_\_\_\_



**CITY CLERK'S CERTIFICATE**

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AT A REGULAR MEETING HELD ON THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_ HAS APPROVED THIS MAP ENTITLED "FINAL MAP OF PARCEL 1" AND HAS ACCEPTED ON BEHALF OF THE CITY OF AMERICAN CANYON PUBLIC, THE FOLLOWING DEDICATIONS SHOWN HEREON IN THE BODY OF SAID MAP:

- "PUBLIC UTILITY EASEMENT" OR "PUE" IS RESERVED FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.
- "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.

\_\_\_\_\_  
 TARESA GEILFUSS  
 CITY CLERK, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA

DATE \_\_\_\_\_

**COUNTY TAX COLLECTOR AND REDEMPTION OFFICER'S CERTIFICATE**

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES (EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE) AGAINST ANY PART OF THE LAND INCLUDED IN THE WITHIN SUBDIVISION, AND THAT SECURITY IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN FILED WITH THE COUNTY TAX COLLECTOR AND REDEMPTION OFFICER TO GUARANTEE THE PAYMENT OF ALL TAXES AND ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOW A LIEN AGAINST THE PROPERTY IN THE WITHIN SUBDIVISION, BUT WHICH ARE NOT YET PAYABLE.

\_\_\_\_\_  
 ROBERT G. MINAHEN  
 COUNTY TAX COLLECTOR AND  
 REDEMPTION OFFICER  
 COUNTY OF NAPA, STATE OF CALIFORNIA

DATE: \_\_\_\_\_

DEPUTY \_\_\_\_\_

DATE: \_\_\_\_\_

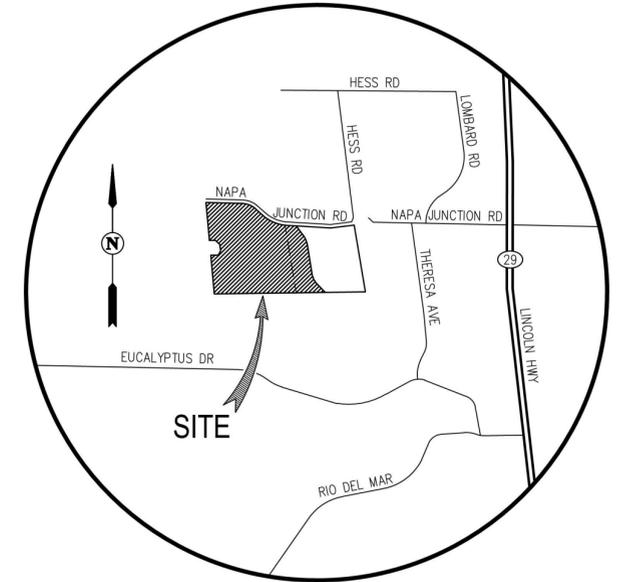
**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF OAT HILL PROPERTIES II, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS TO PARCEL TWO, ON \_\_\_\_\_. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE \_\_\_\_\_, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATE \_\_\_\_\_



\_\_\_\_\_  
 MARK H. WEHBER, P.L.S.  
 L.S. NO. 7960



**VICINITY MAP**  
 NOT TO SCALE

**SIGNATURE OMISSIONS**

PARTIES LISTED BELOW, OWNERS OF EASEMENTS PER DOCUMENTS NOTED BELOW HAVE BEEN OMITTED UNDER PROVISIONS OF SECTION 66436(a)(3)(A)(1) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY:

- AMERICAN CANYON COUNTY WATER DISTRICT: EASEMENT FOR PUBLIC WATER LINES PER BOOK 1338, PAGE 787 OF OFFICIAL RECORDS AND FINAL MAP OF OAT HILL UNIT NO.II (14 RM 4)
- AMERICAN CANYON COUNTY WATER DISTRICT: EASEMENT FOR PUBLIC WATER LINES PER BOOK 1338, PAGE 791 OF OFFICIAL RECORDS AND FINAL MAP OF OAT HILL UNIT NO.II (14 RM 4).
- PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION AND PACIFIC BELL, A CALIFORNIA CORPORATION: EASEMENT FOR ELECTRICAL FACILITIES AND COMMUNICATION FACILITIES PER BOOK 1355, PAGE 779, OF OFFICIAL RECORDS.

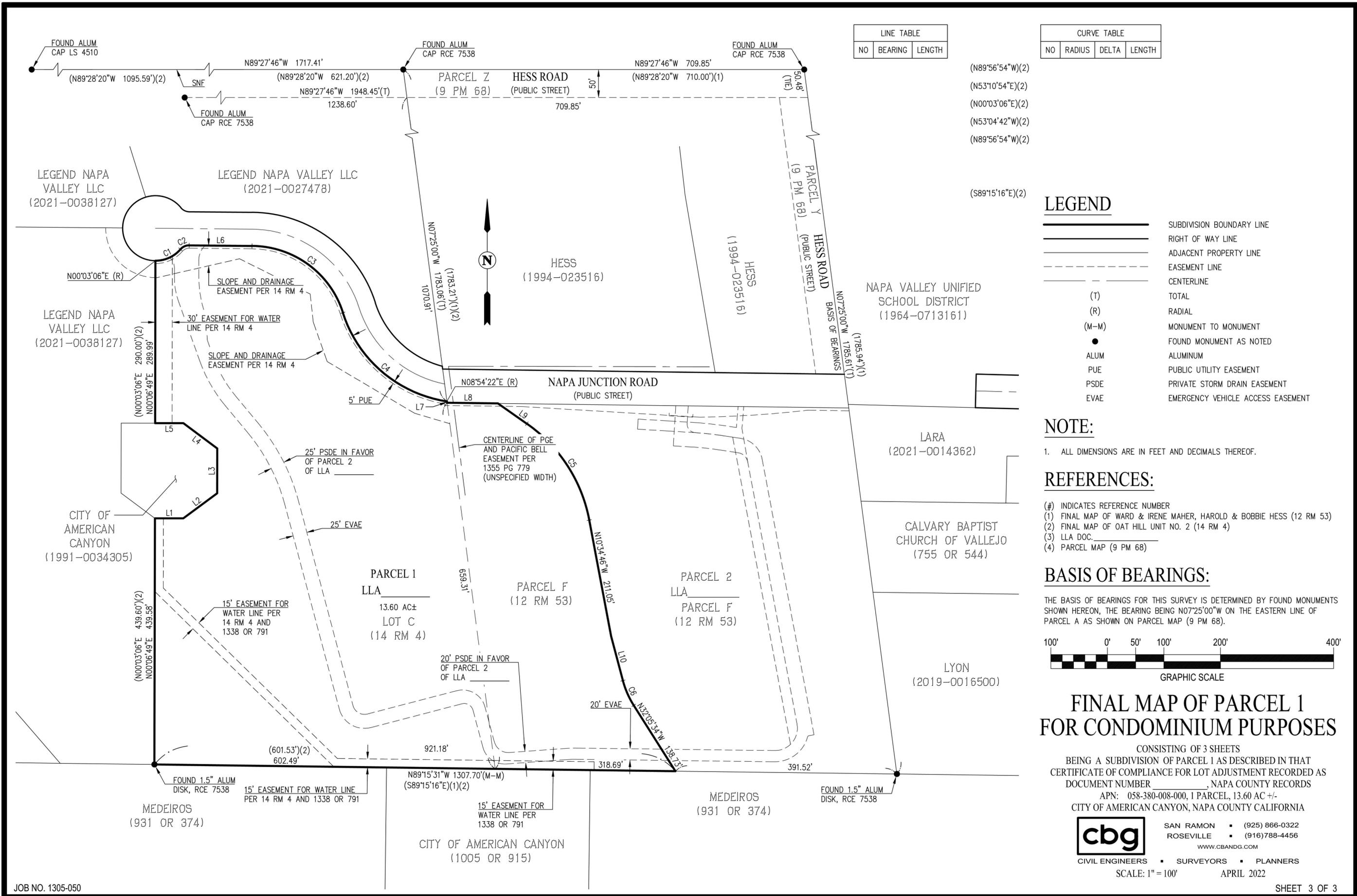
**FINAL MAP OF PARCEL 1 FOR CONDOMINIUM PURPOSES**

CONSISTING OF 3 SHEETS  
 BEING A SUBDIVISION OF PARCEL 1 AS DESCRIBED IN THAT CERTIFICATE OF COMPLIANCE FOR LOT ADJUSTMENT RECORDED AS DOCUMENT NUMBER \_\_\_\_\_, NAPA COUNTY RECORDS  
 APN: 058-380-008-000, 1 PARCEL, 13.60 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



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 ROSEVILLE (916) 788-4456  
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CIVIL ENGINEERS SURVEYORS PLANNERS  
 APRIL 2022



LINE TABLE		
NO	BEARING	LENGTH

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH

(N89°56'54"W)(2)  
 (N53°10'54"E)(2)  
 (N00°03'06"E)(2)  
 (N53°04'42"W)(2)  
 (N89°56'54"W)(2)  
 (S89°15'16"E)(2)

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- EASEMENT LINE
- CENTERLINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- FOUND MONUMENT AS NOTED
- ALUM ALUMINUM
- PUE PUBLIC UTILITY EASEMENT
- PSDE PRIVATE STORM DRAIN EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT

**NOTE:**

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
- (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
- (3) LLA DOC. \_\_\_\_\_
- (4) PARCEL MAP (9 PM 68)

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



**FINAL MAP OF PARCEL 1 FOR CONDOMINIUM PURPOSES**

CONSISTING OF 3 SHEETS  
 BEING A SUBDIVISION OF PARCEL 1 AS DESCRIBED IN THAT CERTIFICATE OF COMPLIANCE FOR LOT ADJUSTMENT RECORDED AS DOCUMENT NUMBER \_\_\_\_\_, NAPA COUNTY RECORDS  
 APN: 058-380-008-000, 1 PARCEL, 13.60 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



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 ROSEVILLE (916) 788-4456  
 WWW.CBANDG.COM

CIVIL ENGINEERS SURVEYORS PLANNERS

SCALE: 1" = 100' APRIL 2022

## OWNER'S STATEMENT

THE UNDERSIGNED, OAT HILL PROPERTIES III, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, HEREBY STATES THAT THEY ARE THE ONLY ENTITIES HAVING RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION HEREON ENTITLED "FINAL MAP PARCEL ONE" CONSISTING OF 3 SHEETS; THAT IT DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS IRREVOCABLY OFFERED FOR DEDICATION TO THE CITY OF AMERICAN CANYON IN FEE FOR PUBLIC ROAD AND UTILITY PURPOSES:

1. NAPA JUNCTION ROAD

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS A NON-EXCLUSIVE EASEMENT FOR PUBLIC PURPOSES:

1. "PUBLIC UTILITY EASEMENT" OR "PUE" IS RESERVED FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.
2. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.
3. "PUBLIC ACCESS EASEMENT" OR "PAE" IS RESERVED FOR THE PURPOSE OF PUBLIC PEDESTRIAN INGRESS AND EGRESS ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.

WE HEREBY RESERVE A "PRIVATE STORM DRAIN EASEMENT" OR "PSDE" FOR THE PURPOSE OF STORM WATER DRAINAGE FACILITIES AND APPURTENANCES THERETO ON, ACROSS, AND OVER THOSE DESIGNATED AREAS. SAID EASEMENT IS FOR THE BENEFIT OF THE PARCEL DELINEATED ON THIS MAP.

OAT HILL PROPERTIES III, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY:

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
NAME: \_\_\_\_\_ NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## RECORDER'S STATEMENT

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_\_ M., IN BOOK \_\_\_\_\_ OF RECORD MAPS AT PAGES \_\_\_\_\_ THROUGH \_\_\_\_\_, INCLUSIVE, COUNTY OF NAPA, STATE OF CALIFORNIA, AT THE REQUEST OF THE CITY OF AMERICAN CANYON.

FILE NO. \_\_\_\_\_ FEES: \_\_\_\_\_

JOHN TUTEUR  
COUNTY RECORDER IN AND FOR THE COUNTY  
OF NAPA, STATE OF CALIFORNIA.

\_\_\_\_\_  
DEPUTY COUNTY RECORDER  
COUNTY OF NAPA  
STATE OF CALIFORNIA

## FINAL MAP OF PARCEL 2 FOR CONDOMINIUM PURPOSES

CONSISTING OF 3 SHEETS  
BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THAT  
CERTIFICATE OF COMPLIANCE FOR LOT ADJUSTMENT RECORDED AS  
DOCUMENT NUMBER \_\_\_\_\_, NAPA COUNTY RECORDS  
APN: 058-320-001-000, 1 PARCEL, 7.22 AC +/-  
CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



CIVIL ENGINEERS • SURVEYORS • PLANNERS  
APRIL 2022

SAN RAMON • (925) 866-0322  
ROSEVILLE • (916) 788-4456  
WWW.CBANDG.COM

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION, THAT IT IS SUBSTANTIALLY THE SAME AS THE TENTATIVE PARCEL MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY ORDINANCES APPLICABLE AT THE TIME OF APPROVAL HAVE BEEN COMPLIED WITH.

NAME: \_\_\_\_\_  
 ERICA AHMANN SMITHIES  
 CITY ENGINEER, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA  
 RCE 65468



DATE: \_\_\_\_\_

I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

NAME: \_\_\_\_\_  
 RICHARD A. MOSHER  
 STATE OF CALIFORNIA  
 RCE 30696



DATE: \_\_\_\_\_

## COUNTY TAX COLLECTOR AND REDEMPTION OFFICER'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES (EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE) AGAINST ANY PART OF THE LAND INCLUDED IN THE WITHIN SUBDIVISION, AND THAT SECURITY IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN FILED WITH THE COUNTY TAX COLLECTOR AND REDEMPTION OFFICER TO GUARANTEE THE PAYMENT OF ALL TAXES AND ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOW A LIEN AGAINST THE PROPERTY IN THE WITHIN SUBDIVISION, BUT WHICH ARE NOT YET PAYABLE.

ROBERT G. MINAHEN  
 COUNTY TAX COLLECTOR AND  
 REDEMPTION OFFICER  
 COUNTY OF NAPA, STATE OF CALIFORNIA

DATE: \_\_\_\_\_

DEPUTY

DATE: \_\_\_\_\_

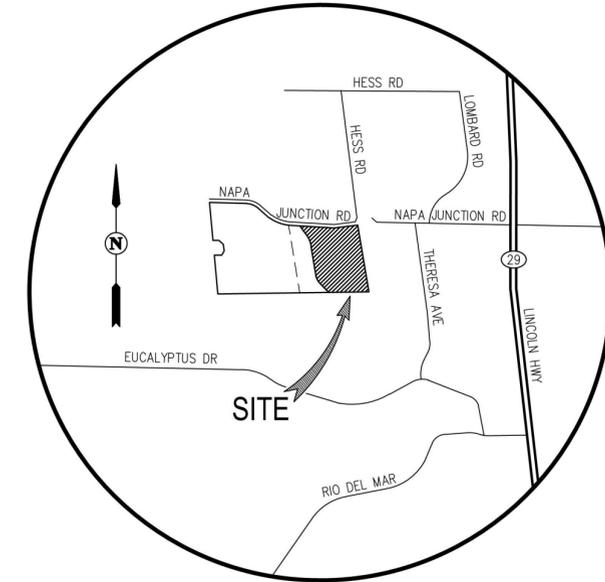
## CITY CLERK'S CERTIFICATE

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AT A REGULAR MEETING HELD ON THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_ HAS APPROVED THIS MAP ENTITLED "FINAL MAP OF PARCEL 2" AND HAS ACCEPTED ON BEHALF OF THE CITY OF AMERICAN CANYON PUBLIC, THE FOLLOWING DEDICATIONS SHOWN HEREON IN THE BODY OF SAID MAP:

1. "PUBLIC UTILITY EASEMENT" OR "PUE" IS RESERVED FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.
2. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.
3. "PUBLIC ACCESS EASEMENT" OR "PAE" IS RESERVED FOR THE PURPOSE OF PUBLIC PEDESTRIAN INGRESS AND EGRESS ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.

TARESA GEILFUSS  
 CITY CLERK, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA

DATE \_\_\_\_\_



VICINITY MAP  
 NOT TO SCALE

## SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF OAT HILL PROPERTIES III, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY ON \_\_\_\_\_. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS BEFORE \_\_\_\_\_, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

DATE \_\_\_\_\_



MARK H. WEHBER, P.L.S.  
 L.S. NO. 7960

## FINAL MAP OF PARCEL 2 FOR CONDOMINIUM PURPOSES

CONSISTING OF 3 SHEETS  
 BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THAT  
 CERTIFICATE OF COMPLIANCE FOR LOT ADJUSTMENT RECORDED AS  
 DOCUMENT NUMBER \_\_\_\_\_, NAPA COUNTY RECORDS  
 APN: 058-320-001-000, 1 PARCEL, 7.22 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA

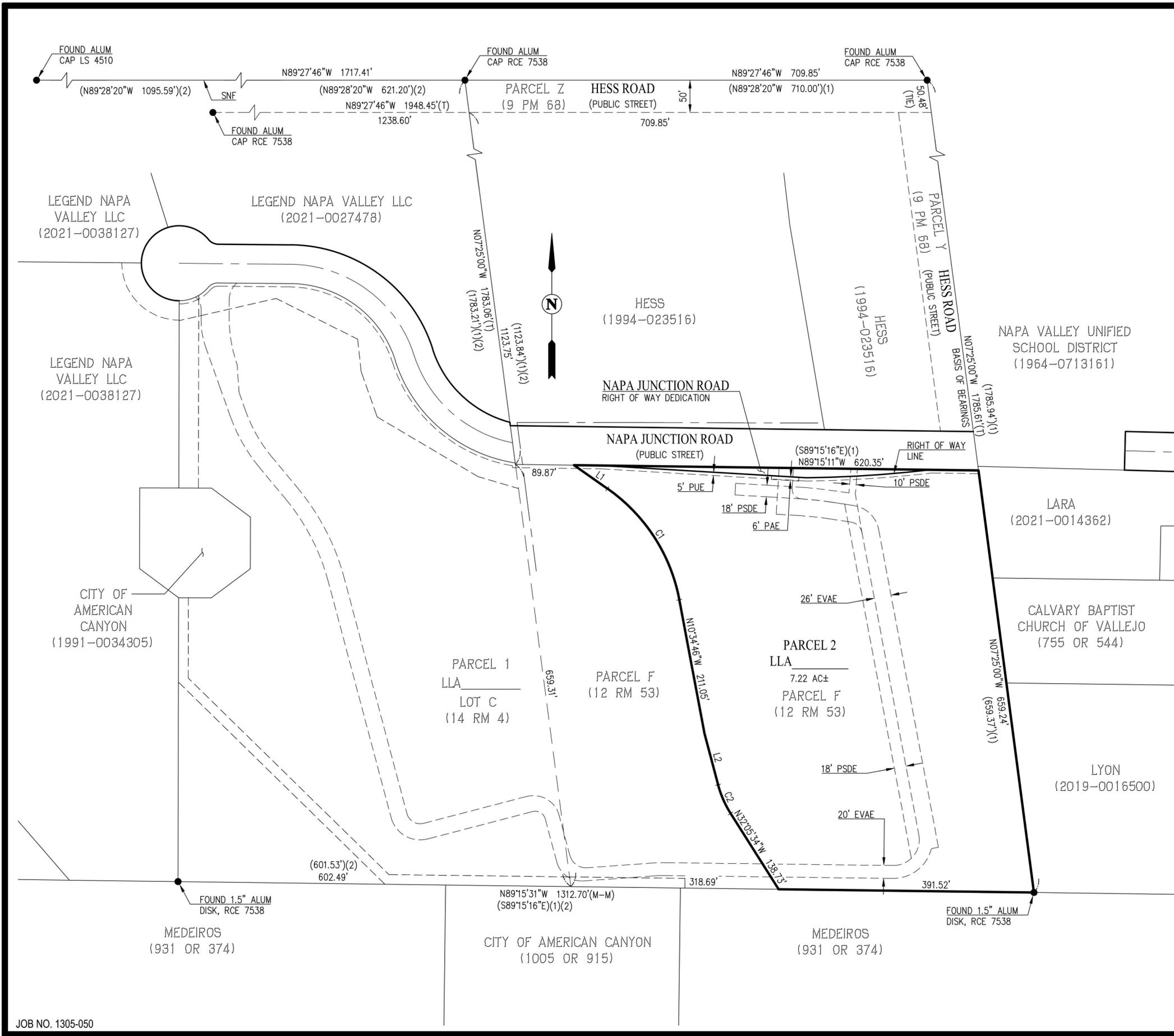


CIVIL ENGINEERS

SAN RAMON ■ (925) 866-0322  
 ROSEVILLE ■ (916) 788-4456  
 WWW.CBANDG.COM

SURVEYORS ■ PLANNERS

APRIL 2022



LINE TABLE		
NO	BEARING	LENGTH

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- EASEMENT LINE
- CENTERLINE
- (T) TOTAL
- (R) RADIAL
- (M-M) MONUMENT TO MONUMENT
- FOUND MONUMENT AS NOTED
- ALUM ALUMINUM
- PUE PUBLIC UTILITY EASEMENT
- PAE PUBLIC ACCESS EASEMENT
- PSDE PRIVATE STORM DRAIN EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT

**NOTE:**

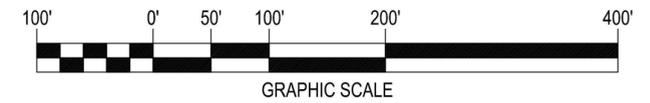
- ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
- (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
- (3) LLA DOC.
- (4) PARCEL MAP (9 PM 68)

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



**FINAL MAP OF PARCEL 2 FOR CONDOMINIUM PURPOSES**

CONSISTING OF 3 SHEETS  
 BEING A SUBDIVISION OF PARCEL 2 AS DESCRIBED IN THAT  
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 APN: 058-320-001-000, 1 PARCEL, 7.22 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



SAN RAMON (925) 866-0322  
 ROSEVILLE (916) 788-4456  
 WWW.CBANDG.COM

CIVIL ENGINEERS SURVEYORS PLANNERS  
 SCALE: 1" = 100' APRIL 2022

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City OF AMERICAN CANYON  
4381 Broadway, Suite 201  
American Canyon, California 94503

EXEMPT from recording fee pursuant to Government Code Section 27383

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## SUBDIVISION IMPROVEMENT AGREEMENT

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This Subdivision Improvement Agreement (this "Agreement"), is made by and between the CITY OF AMERICAN CANYON (hereinafter "City") and R.H. HESS DEVELOPMENT COMPANY, INC. (hereinafter "Developer"), and is effective this 3rd day of May, 2022 (the "Effective Date").

### RECITALS

**WHEREAS**, Developer is the owner of certain real property comprised of approximately 20.8 acres on two parcels (Parcel A and Parcel B) and located southwest of the Napa Junction Road and Hess Road intersection in the City of American Canyon, California (APNs 058-380-008 and 058-320-001), as more particularly depicted on Exhibit A attached hereto (hereinafter the "Property"); and

**WHEREAS**, on September 21, 2021, the City Council approved General Plan Amendments and Rezones to re-designate Parcel A as Residential High Density, 16 dwelling units per acre (RH-1), rezone Parcel A to Residential High Density (RH), re-designate Parcel B as Residential Medium Density, 12 dwelling units per acre (RM), and rezone Parcel B to Residential Medium Density (RM), as well as approved Tentative Maps and Design Permits and certified an Initial Study/Mitigated Negative Declaration, among other approvals (collectively, the "Project Approvals") pursuant to Ordinance Nos. 2021-05 and -06 and Resolution Nos. 2021-61, -62, -63, -64, -76, -77, -78, and -79; and

**WHEREAS**, Developer intends to construct 291 multi-family residential units and associated improvements and infrastructure (the "Project") on the Property pursuant to the Project Approvals; and

**WHEREAS**, certain of the Project Approvals include several conditions of approval, including conditions related to certain required public and private improvements (the "Conditions"); and

**WHEREAS**, City and Developer, by this Agreement, each desire to document and secure the other's improvement and performance obligations related to the

Conditions. The improvements that are the subject of this Agreement are set forth on Schedule A attached hereto (the "Improvements").

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City and Developer (the "Parties" or each a "Party") hereby agree as follows:

## **AGREEMENT**

**1. Improvement Agreement.** The following subsections of this Section 1 apply to the construction of the Improvements and constitute the requisite "Improvement Agreement" for such Improvements as contemplated by the Project Approvals:

a. **Improvements.** Subject to the terms and conditions of this Agreement, Developer hereby acknowledges and agrees that prior to the issuance of the first certificate of occupancy for the Project, all the Improvements described in Schedule A must be constructed in accordance with the plans and specifications accepted by City staff and in accordance with the Conditions. However, no certificate of occupancy shall be withheld if Developer is unable to complete certain of the Improvements due to the inability to obtain any required property rights (the "Rights," as defined below) from third parties as described in subsection b. below or due to any delays due to approvals or consents by third-party agencies or for other reasons outside of the reasonable control of Developer.

b. **Right-of Way Acquisition.** Developer, at its sole cost and expense, shall secure all necessary property rights, including but not limited to rights-of-way and public and private easements, for the Improvements (collectively, the "Rights") and such Rights shall either be set forth on the Project's final map or be granted by separate instrument. Notwithstanding the foregoing, should Developer, after exercising its good faith efforts to acquire any such Rights, be unable to do so, then at the request of Developer, City shall exercise its power of eminent domain to acquire such Rights; provided that Developer enters first into an agreement with the City to pay for all costs incurred by the City to acquire such Rights. If the City does not acquire the Rights necessary to allow the Improvements to be completed by Developer within the statutory timeline provided by law, then Developer shall be relieved of the obligation to construct those Improvements only to the extent they require property not currently owned by Developer or the City. All necessary Rights for the Improvements to be dedicated to City shall be granted to City concurrently with the inspection and acceptance by the City of the applicable Improvement.

c. **Performance of Work.** Developer, at its sole expense, may engage one or more licensed general contractors and/or subcontractors (hereinafter "Contractors") to install the Improvements and shall cause all of the Improvements to be constructed in a good and workmanlike manner. Developer shall cause all of the Improvements to be performed at the places, with the materials, in the manner, and at the grades in accordance with the plans and specifications accepted by City staff.

d. **Work: Milestone for Completion of Improvements.** Except as otherwise provided in Section 1(a) above, prior to the issuance of a certificate of occupancy, the Improvements shall be completed to the satisfaction of the City as evidenced by a notice of completion filed with the Napa County Recorder's Office; provided, however, that the City agrees to issue certificates of occupancy for any building if the only Improvements that remain incomplete are those that are (i) subject to an eminent domain action necessary to require the Rights, (ii) delayed by inaction or delays caused by third-party reviewing agencies or other delays outside of the reasonable control of Developer. Furthermore, in the event that any Improvements are not completed prior to the time that the Developer seeks City approval for a certificate of occupancy, the City shall not unreasonably withhold issuance of a certificate of occupancy.

e. **Time is of Essence – Extension.** Time is of the essence for the completion of the Improvements provided, however, that in the event "good cause" is shown therefore, City may extend the time for commencement or completion of the Improvements so as to not unreasonably withhold a certificate of occupancy for any building in the Project.

f. **Repairs and Replacements.** Developer shall cause the replacement or have replaced, repair or have repaired, as the case may be, or pay to the City, the entire cost of replacements or repairs, of any and all property damaged or destroyed by reason of any work done hereunder, whether such property be owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by the City or by any public or private corporation, partnership or association, or by any person. Any such repair or replacement shall be to the satisfaction and subject to the approval of the said City's Engineer.

g. **Permits; Compliance with Law.** Developer shall cause, at its sole expense, all permits and licenses necessary for the approval and construction of the Improvements to be obtained and shall cause all necessary notices to be issued and all required fees and taxes to be paid. Such permits shall include but not be limited to City Encroachment Permit(s) if necessary. Developer shall cause the furnishment of proof of the required workers' compensation insurance coverage prior to the Contractors commencement of activities in conjunction with the Improvements.

h. **Inspection by City.** Developer shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the work of the Improvements, to assure that the work done shall be done in accordance with the plans and specifications accepted by City staff. Inspections by City are solely for the benefit of City. City shall not be responsible for any defective work or materials which could have been discovered by Developer through independent inspection regardless of whether or not the City undertook such inspections.

i. **Securities.** Prior to issuance of the first building permit for the Project, and in accordance with Government Code section 66499 et seq., Developer shall provide, or cause its Contractor to provide, improvement security for the Improvements based on the

estimated costs thereof in favor of the City in an amount and form reasonably acceptable to the City.

Said security shall be prepared on the standard forms provided by City and available from City's Engineer. Also, the security may be provided separately for each Improvement as shown on Schedule A.

Irrevocable letters of credit or cash deposits or savings account(s) or certificate(s) payable to City in form reasonably satisfactory to City and equivalent to said surety bonds may be accepted by City in place of the bonds with all legal expenses incurred by City in reviewing and approving said bond equivalents to be paid by Developer.

Developer agrees to maintain such surety bonds and/or approved and applicable irrevocable letter(s) of credit, or cash deposit(s), or savings account(s) or other acceptable certificate(s) payable to the City in full force and effect consistent with the terms of this Agreement, including any extensions of time as may be granted by the City.

As and when various discrete components of the Improvements have been constructed and completed and have been accepted by the City pursuant to the terms and conditions of this Agreement, City agrees to issue a notice of completion and acceptance of such components of the Improvements (individually, a "Notice of Completion") and cooperate with Developer to reduce the outstanding amount of the security to reflect the then remaining unpaid costs of the Improvements.

j. **Title to Improvements**. Title to, and ownership of, all Improvements constructed hereunder by Developer which are to be delivered to City or for which there is an irrevocable offer of dedication as set forth on the Project Approvals shall vest absolutely in City upon completion and acceptance of such Improvements by the City. For the avoidance of any doubt, the City shall be deemed to have accepted any irrevocable offers of dedication upon its issuance of a certificate or notice of completion with respect to any Improvements constructed therein and thereon.

k. **Repair or Reconstruction of Defective Work**. If, within a period of one (1) year after the notice of completion evidencing final acceptance of any work of an Improvement performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement or the specifications referred to herein, Developer shall, without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part of parts of the work or structure. Should Developer fail to make, or undertake with due diligence, the aforesaid repairs within twenty (20) calendar days after City has given written notice of such failure or should the exigencies of the case require repairs or replacements to be made before Developer can be notified or act, City may, at its option, make the necessary repairs or replacements or perform the necessary work, and Developer shall pay to City the actual cost of such repairs. The security described in subsection i. shall be released upon expiration of such one-year period if no claim is made within such period.

l. **Developer Not Agent of City.** Notwithstanding any other provision of this Agreement, neither Developer nor any of Developer's agents, contractors and/or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

m. **Cost of Engineering and Inspection.** Developer shall be responsible to pay 100% of the costs incurred by City for plan check and inspection services. Should the City elect to utilize the services of a consultant, Developer shall pay the actual and reasonable cost of the consultant's time.

n. **Notice of Breach and Default.** After commencement of work of the Improvements, if Developer refuses or fails to obtain prosecution of the work, or any several parts thereof, with such diligence as will insure its completion within the time specified, or any extensions thereof, or fails to obtain completion of said work within such time, subject to extension, or if Developer should be adjudged as bankrupt, or Developer should make a general assignment for the benefit of Developer's creditors, or if a receiver should be appointed in the event of Developer's insolvency, or if Developer or any of Developer's contractors, subcontractors, supplier, agents or employees, should violate any of the provisions of this Agreement, City's City Manager or City Council may serve written notice upon Developer and the applicable surety of breach of this Agreement, or any portion thereof, and default of Developer; provided, however, that Developer shall be provided a reasonable period of time within which to cure such defaults.

In the event any such notice of breach is given and surety is present, Developer's surety shall have the duty to take over and complete the work of the Improvements after the expiration of any applicable cure period; provided, however, that if the surety, within ten (10) days after serving upon it such notice of breach, does not give City written notice of its intention to take over and complete the performance of the contract, and does not commence performance thereof within five (5) days after notice to City of such election, City may take over the work and prosecute the same to completion by contract or any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to City for any costs or damages occasioned City thereby, and, in such event, City without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary therefor.

o. **Insurance.** During the work of the Improvements, Developer agrees to have and require its Contractors to maintain the policies set forth in Exhibit B entitled "INSURANCE REQUIREMENTS," which Exhibit is attached and incorporated by this reference. All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the parties. A lapse in any required insurance coverage during the work of the Improvements shall be a breach of this Agreement.

Developer shall procure and maintain insurance as set forth in Exhibit B, attached and incorporated by this reference. Developer's obligation to maintain such insurance shall

commence upon the commencement of the work of any of the Improvements and shall expire upon the issuance of the last notice of completion with respect to the Improvements (subject to any so-called "tail" requirements in Exhibit B).

Developer agrees to cause and maintain in force at all times during this Agreement, the provision of workers' compensation insurance as required by law.

Developer agrees to include with all subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Developer agree to be bound to Developer and City in the same manner and to the same extent as Developer is bound to City under this Agreement and any other applicable contract documents. Subcontractor further agrees to include these same provisions with any sub-subcontractor. A copy of the indemnity and insurance provisions in this Agreement will be furnished to the subcontractor upon request. Developer shall require all subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and will provide proof of compliance to the City.

The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California.

Developer agrees that if the aforesaid insurance is not kept in full force and effect, City may terminate this Agreement upon ten (10) days prior notice to Developer, unless Developer delivers evidence of insurance to City within such ten (10) day period.

At all times during the term of this Agreement, Developer shall be required to maintain on file with the City a certificate or certificates of the required insurance as set forth in Exhibit B showing that the required insurance policies are in effect in the required amounts.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of an insurance policy or proceeds available to the named insured.

Developer shall name the City as an additional insured as required in Exhibit B.

p. **Notice of Condition of Property.** Developer will at all times from the effective date of this Agreement to the completion and acceptance of said work of Improvement by the City, give good and adequate warning of each and every dangerous condition caused by the construction of said Improvement and will protect the traveling public therefrom.

q. **Right of Entry.** The City, its officers, agents and employees and the surety of any bond shall have the right from and after date hereof to enter upon the Property and any Rights where the Improvements are located for purposes of inspection and investigation of same at any and all reasonable times.

r. **Expiration of this Section 1.** Upon expiration of the one (1) year period described in subsection k. above (or if a warranty claim has been made within such period, upon full and final resolution of such claim), City at Developer's request shall confirm the termination of this Agreement as it relates to this Section 1 and execute such recordable instruments as may be reasonably requested by Developer to evidence such termination.

2. **Reimbursement Agreement.** Developer and City have entered into a that certain Fee Credit/Fee Reimbursement Agreement, dated as of even date herewith. The provisions of the Fee Credit/Fee Reimbursement Agreement shall continue to apply to the Creditable Improvements (as defined therein), as indicated in Schedule A to this Agreement.

3. **Indemnification of City.** Subject to the final sentence of this Section 3, Developer, by execution of this Agreement, specifically agrees to assume the defense of, indemnify and hold harmless City and its elected representatives, officers, employees, agents, consultants, and volunteers (the "Indemnitees"), from and against all liabilities, actions, damages, claims, losses, or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively, "Liabilities"), to which they may be subjected or put, by reason of or resulting from the design, construction, or installation of the Improvements, except to the extent the Liabilities arise from the sole negligence, active negligence, or willful misconduct of City and/or the Indemnitees. This indemnification shall extend to Liabilities occurring after this Agreement is terminated as well as while it is in force. Notwithstanding the foregoing, following the acceptance of the Improvements by City, or if there is an applicable warranty, following the end of any applicable warranty period, the Developer shall not be obligated to indemnify the Indemnitees for Liabilities to the extent that such Liabilities arise from Indemnitees' active or passive negligence.

4. **Transfer and Assignments.** Developer shall have the full right to assign this Agreement, in connection with any sale, transfer or conveyance of the Property or portion thereof. Upon the express written assumption by the assignee of such assignment and the conveyances of Developer's interest in the Property related thereto, Developer shall be released from any further liability or obligation hereunder related to the portion of the Property so conveyed. If the transferred Property consists of a less than the entire Property, or less than Developer's entire title to or interest in the Property, Developer shall have the right to transfer, sell and/or assign to the transferee only those of Developer's rights and obligations under this Agreement that are allocable or attributable to the transferred Property. Any transferee shall assume in writing the obligations of Developer under this Agreement arising or accruing from and after the effective date of such transfer, sale, or assignment. Developer shall provide City with written notice of any assignment

or transfer of this Agreement no later than thirty (30) days after such assignment or transfer.

**5. Attorneys' Fees.** In case suit is brought on this Agreement, each Party agrees to pay its own costs and expenses and fees incurred in enforcing any obligations or rights created by this Agreement, including attorneys' fees.

**6. Notices.** Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows.

City of American Canyon  
Attention: City Manager  
4381 Broadway, Suite 201  
American Canyon, California 94503

And with copies to:  
William D. Ross, Esq.  
[address]

Notices required to be given to Developer shall be addressed as follows:

R.H. Hess Development Company, Inc.  
3423 Broadway Street, Suite D-5  
American Canyon, CA 94503  
Attn: Richard Hess

And with copies to:  
Clark Morrison, Esq.  
Cox, Castle & Nicholson LLP  
50 California Street, Suite 3200  
San Francisco, CA 94111

Notices required to be given any surety shall be addressed to its address shown on its bond; provided, that any party or the surety may change such address by notice in writing to the other party, and thereafter notices shall be addressed and transmitted to the new address.

**7. Ordinances, Rules and Regulations.** Developer shall at all times be bound by and abide by all of City's ordinances, rules and regulations now in effect or hereinafter amended or enacted as applicable to the Improvements. This Agreement shall prevail over the terms and conditions of any such ordinances, rules and regulations if there is any conflict between such ordinances, rules and regulations and this Agreement.

8. **Binding Form of Agreement.** It is agreed by and between the Parties to this Agreement that the Agreement firmly binds the Parties, their heirs, executors, administrators, successors or assignees, jointly and severally. Upon expiration of the one (1) year period described in Section 1.k. (or if a warranty claim has been made within such period, upon full and final resolution of such claim), City at Developer's request shall confirm the termination of this Agreement as it relates to Section 1 and execute such recordable instruments as may be reasonably requested by Developer to evidence such termination.

9. **Governing Law and Venue.** This Agreement and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of California. The venue for any legal action in state court filed by a Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa. The venue for any legal action in federal court filed by a Party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement within the jurisdiction of the Federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceeding under this Agreement shall be in Napa County, California; however, nothing in this Agreement section shall obligate a Party to submit to arbitration any dispute arising under this Agreement.

10. **No Waiver.** Any waiver at any time by any Party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.

11. **Severability.** In the event any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, then such provision or provisions only shall be deemed null and void and shall not affect the validity of this Agreement, and the remaining provisions of this Agreement shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all of which when taken together shall constitute but one Agreement.

[Agreement continued on next page]

**IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.**

**"City"**

City of American Canyon

By: \_\_\_\_\_

City Manager

**"Developer"**

R.H. Hess Development Company, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Deputy City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

William D. Ross

City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

Please refer to the insurance requirements listed below. Those that have an "X" indicated in the space before the requirement apply.

Developer shall procure and maintain for the duration of the Agreement as it relates to the construction of the Improvements insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Developer, its agents, representatives, employees or subcontractors.

Developer shall provide its insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements.

Developer shall furnish City with copies of original endorsements affecting coverage required by this Exhibit B. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences. City has the right to require Developer's insurer to provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

**Commercial General Liability (CGL):**

\_\_\_ Coverage at least as broad as Insurance Services Office ("ISO") Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

\_\_\_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

\_\_\_ Coverage at least as broad as ISO Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

**Automobile Liability:**

- \_\_\_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), or if Developer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
  
- \_\_\_ Coverage at least as broad as ISO Form Number CA 0001 covering, Code 1 (any auto), with limits no less than **\$5,000,000** per accident for bodily injury and property damage.
  
- \_\_\_ Garage keepers' extra liability endorsement to extend coverage to all vehicles in the care, custody and control of the Developer, regardless of where the vehicles are kept or driven.

**Professional Liability (Errors and Omissions):**

The Employer's Liability policy shall be endorsed to waive any right of subrogation as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees.

- \_\_\_ Insurance appropriate to the Developer or Developer's Consultant profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate
  
- \_\_\_ (If Design/Build), with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
  
- \_\_\_ Insurance appropriate to the Developer or Developer's Consultant profession, with limit no less than \_\_\_\_\_ per occurrence or claim, \_\_\_\_\_ aggregate

**Workers' Compensation Insurance:**

- \_\_\_ Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. *(Not required if Developer provides written verification it has no employees)*

The Developer (or its Contractors) makes the following certification, required by Section 1861 of the California Labor Code:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Developer (or Contractor) Signature

**Builder's Risk (Course of Construction):**

\_\_\_\_ Insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.

**Surety Bonds:**

\_\_\_\_ Contractor shall provide the following Surety Bonds or Irrevocable letters of credit or cash deposits or savings account(s) or certificate(s) payable to City:

1. Performance Bond
2. Payment Bond
3. Maintenance Bond

The Payment Bond and Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contracts is for longer than one (1) year a Maintenance Bond equal to ten percent (10%) of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

**Developer's Pollution Legal Liability:**

\_\_\_\_ Developer's pollution legal liability and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim and **\$2,000,000** policy aggregate.

If the Developer maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Developer. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

**Other Insurance Provisions:**

The insurance policies are to contain, or be endorsed to contain the following provisions:

***Additional Insured Status:***

The insurance policies are to contain, or be endorsed to contain the following provision:

The City, its elected and appointed officials, officers, attorneys, agents, and employees are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer or Consultant or any Subcontractors including materials, parts, or equipment furnished in connection with such work or operations, including completed operations. General liability coverage can be provided in the form of an endorsement to the Developer's or Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City (if agreed to in a written contract or agreement) before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

***Primary Coverage:***

The insurance policies are to contain, or be endorsed to contain the following provision:

For any claims related to this contract, the **Developer's insurance coverage shall be primary insurance** as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees. Any insurance or self-insurance maintained by the City its elected and appointed officials, officers, attorneys, agents, and employees shall be in excess of the Developer's insurance and shall not contribute with it.

***Notice of Cancellation, Suspension or Otherwise Voiding Policies:***

Each insurance policy required above shall contain, or be endorsed to contain **that**

coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except with thirty (30) days' prior written notice by certified mail, return receipt requested to the City.

***Waiver of Subrogation:***

Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer. **The Workers' Compensation Policy shall be endorsed with a waiver of subrogation** in favor of the City for all work performed by Developer or Contractor, its employees, agents and subcontractors.

***Deductibles and Self-Insured Retentions ("SIR"):***

Any deductibles or self-insured retentions must be declared to an approved by City. The City may require the Developer to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. At the option of the City, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its elected and appointed officials, officers, attorneys, agents, and employees; or (2) the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All SIRs must be disclosed to Risk Management for approval and shall not reduce the limits of liability.

Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.

City reserves the right to obtain a full-certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

***Completed Operations***

For Construction Agreements, Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

***Acceptability of Insurers:***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

***Claims Made Policies: (note - should be applicable only to professional liability, see below)***

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided **for at least five (5) years after completion of contract of work.**
3. If coverage is canceled or non-renewed, and not replaced **with another claims-made policy form with a Retroactive Date prior to** the contract effective date, the Developer must purchase "extended reporting" coverage for a minimum of **five (5) years** after completion of work.
4. A copy of the claims reporting requirements must be submitted to the City for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractor's Pollution Liability Policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability Policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

***Subcontractors:***

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors.

Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under this Agreement and any other contract documents. Subcontractor further agrees to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work. A copy of the City indemnity and insurance provisions will be furnished to the subcontractor upon request.

***Verification of Coverage:***

Developer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All

certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

***Special Risks or Circumstances***

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances.

***Failure to Comply:***

Each insurance policy required above shall contain or be endorsed to contain that any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected and appointed officials, officers, attorneys, agents, and employees.

***Applicability of Coverage:***

Each insurance policy required above shall contain or be endorsed to contain that the Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**Oat Hill Multi-Family Residential Project**  
**City of American Canyon**  
**Schedule A: Improvements**

IMPROVEMENT	REIMBURSEMENT
<p><u>Napa Junction Road Improvements:</u></p> <ul style="list-style-type: none"> <li>• Construct an approximately 300-foot segment of Napa Junction Road between the Hess Road/Napa Junction Road intersection and the existing roadway fronting Napa Junction Magnet Elementary School. The preliminary roadway shall have a curb-to-curb width of 40-feet with 5-foot wide (includes curb width) attached sidewalks on both sides. The final roadway section shall be as determined by the City Engineer. The extent of the roadway construction may be extended as necessary to meet City roadway geometric standards.</li> <li>• Construct a new 5-foot wide (includes curb width) attached sidewalk along the south side of Napa Junction Road between the east end of the new road segment described above to the existing sidewalk approximately 100-feet west of Theresa Avenue.</li> <li>• Construct a new 5-foot wide attached sidewalk along the south side of Napa Junction Road between the Hess Road intersection and the western limit of Parcel A.</li> </ul>	<p>Subject to Fee Credit/Fee Reimbursement Agreement</p>
<p><u>Water Main Replacement in Napa Junction Road:</u></p> <ul style="list-style-type: none"> <li>• Replace approximately 590 linear feet of the existing 6-inch water main in Napa Junction Road with a new 12-inch water main between the intersection with Theresa Avenue to the intersection with Hess Road, connecting to the existing water mains in those intersections.</li> </ul>	<p>Subject to Fee Credit/Fee Reimbursement Agreement</p>
<p><u>Sanitary Sewer Main Replacement in Napa Junction Road and Theresa Avenue:</u></p> <ul style="list-style-type: none"> <li>• Replace approximately 1,800 linear feet of the existing 6-inch sanitary sewer mains in Napa Junction Road between Hess Road and Theresa Avenue and in Theresa Avenue from Napa</li> </ul>	<p>Subject to Fee Credit/Fee Reimbursement Agreement</p>

IMPROVEMENT	REIMBURSEMENT
<p>Junction Road to a point approximately 1,200 linear feet south thereof with new 8-inch and 10-inch sanitary sewer mains. The Engineer of Record shall conduct a capacity analysis for the new sanitary sewers to determine where it should upsize from 8-inch to 10-inch.</p>	
<p><u>Recycled Water Main in Lombard Road and Hess Road:</u></p> <ul style="list-style-type: none"> <li>Install approximately 1,300 linear feet of a new 8-inch recycled water main in Lombard Road between the cul-de-sac at its northern terminus and Hess Drive and in Hess Drive between Lombard Road and the Little League fields.</li> </ul>	<p>Subject to Fee Credit/Fee Reimbursement Agreement</p>
<p><u>Water Main in Napa Junction Road</u></p> <ul style="list-style-type: none"> <li>Install approximately 1,310 linear feet of 12-inch water main in Napa Junction Road from the intersection of Hess Road to the Oat Hill Tank #2, connecting to the existing 12-inch water mains.</li> </ul>	<p>Subject to Fee Credit/Fee Reimbursement Agreement</p>
<p><u>Fire Flow Demand:</u></p> <ul style="list-style-type: none"> <li>Install public water system improvements sufficient to meet the domestic and fire flow demands of the project by upgrading the City's existing Oat Hill Pump Station that feeds Oat Hill Tank #2 from Oat Hill Tank #1.</li> </ul>	
<p><u>Storm Drain Facilities:</u></p> <ul style="list-style-type: none"> <li>Construct private on-site drainage facilities, detention facilities, and other appurtenances to collect and convey all surface drainage to an approved private storm drain facility or outfall. Onsite drainage facilities shall provide for the positive drainage of all adjacent upstream or upgrade properties to prevent ponding. Existing run-on from adjacent properties shall not be obstructed and shall be conveyed onsite. Off-site peak storm water discharge shall not exceed 90% of the undeveloped peak flow from the 24-hour, 100-year event. The storm drains and detention facilities shall be substantially consistent with the Preliminary Plans. However, the sizing of all</li> </ul>	

IMPROVEMENT	REIMBURSEMENT
<p>storm drains and detention facilities shall be determined by the approved final drainage report.</p>	
<p><u>Stormwater Quality Facilities:</u></p> <ul style="list-style-type: none"> <li>• Permanent on-site private post-construction stormwater treatment BMPs shall be designed and constructed in accordance with the approved final Stormwater Control Plan (SWCP). Runoff from all roof drains shall be conveyed to the onsite stormwater treatment facilities.</li> </ul>	
<p><u>Emergency Vehicle Access Road</u></p> <ul style="list-style-type: none"> <li>• Construct a 20-foot wide paved vehicle road on Oat Hill Parcel A and across Oat Hill Parcel B connecting to Napa Junction Road.</li> </ul>	

**CITY OF AMERICAN CANYON**  
**FEE CREDIT / FEE REIMBURSEMENT AGREEMENT**  
**FOR WATER, SEWER, AND ROAD INFRASTRUCTURE**  
**IMPROVEMENTS**

**R.H. HESS DEVELOPMENT COMPANY**  
**OAT HILL MULTI-FAMILY PROJECT**

This Fee Credit / Fee Reimbursement Agreement (the “**Agreement**”) is entered into as of the 3rd day of May, 2022, by and between the City of American Canyon, a municipal corporation (the “**City**”), and R.H. Hess Development Company, Inc. (“**Developer**”).

**RECITALS**

**WHEREAS**, Developer is the owner of certain real property comprised of approximately 20.8 acres on two parcels (Parcel A and Parcel B) and located southwest of the Napa Junction Road and Hess Road intersection in the City of American Canyon, California (APNs 058-380-008 and 058-320-001), as shown in Exhibit A;

**WHEREAS**, on August 17, 2020, Developer submitted entitlement applications for the development of 291 residential units and associated amenities on Parcels A and B (the “**Project**”);

**WHEREAS**, on September 21, 2021, the City adopted Ordinance Nos. 2021-05 and -06, approving a General Plan Amendment and Rezone to re-designate Parcel A as Residential High Density, 16 dwelling units per acre (RH-1), rezone Parcel A to Residential High Density (RH), re-designate Parcel B as Residential Medium Density, 12 dwelling units per acre (RM), and rezone Parcel B to Residential Medium Density (RM). On that date, the City also adopted Resolution Nos. 2021-61, -62, -63, -64, -76, -77, -78, and -79, approving Tentative Maps and Design Permits for the Project and certifying an Initial Study/Mitigated Negative Declaration for the Project, among other approvals;

**WHEREAS**, City Municipal Code section 13.06.110 authorizes the City to enter into fee credit and fee reimbursement agreements for the construction of off-site or oversized improvements to the City’s water or sewer system;

**WHEREAS**, Resolution Nos. 2021-76, -77, -78, and -79, approving Tentative Maps and Design Permits for the Project, provide that certain other water and road infrastructure improvements constructed by Developer qualify for fee credits and fee reimbursement for the costs of such improvements;

**WHEREAS**, Developer proposes to construct certain eligible water, sewer, recycled water, and road improvements as part of the Project that would otherwise be financed by City fees and rates and built by the City; and

**WHEREAS**, this Agreement provides for the allocation of certain fee credits and fee reimbursement for the costs of such improvements.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and Developer hereby agree as follows:

## **AGREEMENT**

### **Section 1 Construction of Facilities**

1.1 Prior to the issuance of the first certificate of occupancy for the Project, subject to the requirements of the Subdivision Improvement Agreement and except as provided therein, Developer will construct the improvement projects depicted in Exhibit B and listed in Exhibit C and identified in Conditions of Approval (“COA”) provided in Resolution Nos. 2021-76 (COA No. 76), -77 (COA No. 73), -78 (COA No. 75), and -79 (COA No. 74), approving Tentative Maps and Design Permits for the Project (the “**Creditable Improvements**”).

1.2 Developer shall cause the construction of the Creditable Improvements in accordance with the Subdivision Improvement Agreement.

1.3. In consideration of Developer constructing the Creditable Improvements, the City agrees to provide fee credits and fee reimbursement to Developer subject to the terms of this Agreement.

### **Section 2 Permits, Process, and Procedures**

2.1 Developer shall be responsible for obtaining all necessary permits for construction of the Creditable Improvements, provided the City shall use its best efforts to expedite plan and permitting review associated with the Creditable Improvements and the Project.

2.2 The Developer shall be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly-funded public works projects, including, but not limited to, competitively bidding the construction work and paying prevailing wages, to the extent such requirements apply.

### **Section 3 Fee Credits for the Costs of the Creditable Improvements**

3.1 In consideration of Developer’s construction of the Creditable Improvements, the City shall credit the Developer for all amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition, and development of the Creditable Improvements, based upon the Actual Costs thereof, as approved by the City Engineer (the “**Fee Credits**”).

“**Actual Costs**” means all of the costs incurred by the Developer to construct the Creditable Improvements. Actual Costs shall consist of the costs of (i) construction of the Creditable Improvements, based on the price included in any construction contract or reasonable change orders for the construction of the Creditable Improvements and (ii) traffic control, staging and storm water pollution prevention implementation measures (i.e., structural BMPs) related to such construction, plus (iii) an allowance for Soft Costs associated with construction. “**Soft Costs**” shall include, without limitation, costs associated with storm water pollution prevention monitoring and management (i.e., non-structural BMPs) and engineering, design, environmental, permitting, inspection, testing, surveying, and bonding related to the construction of the

Creditable Improvements. In no event shall Soft Costs exceed the amount of 25 percent of the Actual Costs. Developer must provide contracts, invoices and any other form of documentation to substantiate the Actual Costs. However, in consideration of the foregoing 25 percent allowance for Soft Costs based on the Actual Costs, Developer shall not be obligated to provide contracts, invoices or any other form of documentation to substantiate the actual amount of Soft Costs incurred, nor shall Developer be allowed to request a greater amount due to actual Soft Costs exceeding this fixed-percentage allowance.

For construction change orders to be given consideration for Fee Credit or Fee Reimbursement, the Developer must:

- Present the change order request to the extent the change order is in excess of 5% of the aggregate Estimated Costs and estimated cost along with supporting information to the City; and
- Fully document any work performed under a change order to verify all associated costs.

Failure to comply with any of these procedures may result in the ineligibility of the requested change order for Fee Credit/Fee Reimbursement.

3.2 The Fee Credits shall be available upon full execution of this Agreement. City and Developer acknowledge that the Actual Costs are unknown at the time of execution of this Agreement. Accordingly, the Fee Credits or Fee Reimbursements available shall be based on the Estimated Costs of the planning, financing, and development of the Creditable Improvements, which will be determined by the City Engineer and Developer prior to the issuance of building permits (the “**Estimated Costs**”). The City Engineer and Developer will reasonably determine the Estimated Costs for the following improvements:

- Napa Junction Road Improvements;
- Water Main Replacement in Napa Junction Road;
- Sanitary Sewer Main Replacement in Napa Junction Road and Theresa Avenue;
- Recycled Water Main in Lombard Road and Hess Road; and
- Water Main Extension.

3.3 The Fee Credits shall apply to the following City fees charged by the City. When and as fees are imposed for each building permit, the Developer may use a portion of the Fee Credit, on a dollar for dollar basis, against the fees charged. Usage of Fee Credits by Developer for each building permit shall serve to reduce the total Fee Credit in an equivalent amount to the amount of credit used.

- Napa Junction Road Improvements shall apply to the City’s Traffic Impact Fee;
- Water Main Replacement in Napa Junction Road shall apply to the City’s Water Capacity Fee;
- Sanitary Sewer Main Replacement in Napa Junction Road and Theresa Avenue shall apply to the City’s Wastewater Capacity Fee;

- Recycled Water Main in Lombard Road and Hess Road shall be assumed to provide a sufficient potable water demand offset to comply with the City’s Zero Water Footprint policy such that the Project shall not be required to pay any Zero Water Footprint fees; and
- Water Main Extension shall apply to the City’s Water Capacity Fee.

3.4 City and Developer acknowledge that the Actual Costs may vary from the Estimated Costs. Any variation in costs shall be agreed to and/or resolved by the parties as provided in Section 6 below.

**Section 4 Fee Reimbursements**

4.1 Notwithstanding Section 3, above, the amount of Fee Credits granted to Developer pursuant to this Agreement shall not exceed the amount of City fees due from the Developer as a result of the Project. If the amount of the Fee Credit from Section 3 exceeds the fee obligation of the Developer for the Project, the remaining balance shall be paid as a reimbursement to Developer pursuant to the procedures set forth herein (the “**Fee Reimbursement**”).

4.2 The Fee Reimbursement, if any, shall be paid by the City as fee and rate revenues are collected within the City. After completion of the Creditable Improvements, such payments shall be made by the City at least quarterly throughout the year as funds become available. Developer shall have first priority for reimbursement over any reimbursement obligations promised, agreed to, and/or approved by the City after the Effective Date of this Agreement.

4.3 The Fee Reimbursement shall accrue interest thereon at the rate of four percent (4%) per annum, commencing as of the Effective Date of this Agreement and continuing until the Fee Reimbursement is paid in full or until the Fee Reimbursement reverts to a Fee Credit as described in Section 4.4, below.

4.4 If, after five (5) years, the City has not paid the full amount of the Fee Reimbursement due to Developer, the balance shall revert to a Fee Credit, which Developer may use on any property in the City or transfer to other owners, builders, or developers, as set forth in Section 8, below.

4.5 This Section 4 shall not apply to the Recycled Water Main in Lombard Road and Hess Road Creditable Improvement project which, upon completion, shall be assumed to provide a sufficient potable water demand offset to comply with the City’s Zero Water Footprint policy such that the Project shall not be required to pay any Zero Water Footprint fees.

**Section 5 Annual Adjustments to Fee Credits and Fee Reimbursements**

5.1 On each annual anniversary date of the Effective Date, the amount of the Fee Credit granted to Developer hereunder, and the amount of the Fee Reimbursement owed to Developer hereunder, if any, shall be adjusted, up or down, by the annual change in the Engineering News Record Construction Cost Index or comparable index (the “CCI”), provided

any such downward adjustment shall not go below the Actual Cost of the Creditable Improvements, as approved by the City.

5.2 This Section 5 shall not apply to the Recycled Water Main in Lombard Road and Hess Road Creditable Improvement project which, upon completion, shall be assumed to provide a sufficient potable water demand offset to comply with the City's Zero Water Footprint policy such that the Project shall not be required to pay any Zero Water Footprint fees.

**Section 6**      **“True Up” of Fee Credits**

6.1 Upon completion of the Creditable Improvements, the final determination of the Actual Costs upon with the Fee Credit/Fee Reimbursement amounts are based shall be determined by the City Engineer, based on documentation thereof provided by Developer.

6.2 In order to secure final Fee Credit and/or commitment for Fee Reimbursement, Developer shall provide the following items to the City Engineer upon completion of the Creditable Improvements in order for the City to determine the Actual Costs incurred by Developer for the Creditable Improvements:

- a) Copies of the original construction contracts and any change orders that have been agreed to by the Developer, contractor, and the City. The portion of each change order associated with the Creditable Improvements must be itemized separately;
- b) Copies of all invoices and certified payroll records, with unconditional lien releases, submitted by the contractor;
- c) Copies of all checks issued by the Developer with related invoices indicated; and
- d) A summary tabulation of all contractor invoices and Developer payments.

6.3 If the Actual Costs for the Creditable Improvements exceeds the Estimated Costs on which the Fee Credits are based, the difference will be treated as additional Fee Reimbursement amounts, due and payable as described in Section 4, above.

6.4 If the Actual Costs of the Creditable Improvements are less than the Estimated Costs on which the Fee Credits are based, the difference will first be used to reduce the amount of any Fee Reimbursement and then to relinquish the amount of any unused Fee Credits. If and to the extent any Fee Credits have been used in excess of the Actual Costs, Developer, or Developer's assigns, shall repay such excess in cash, within thirty (30) calendar days of receipt of notice from the City of the amount to be repaid.

6.5 This Section 6 shall not apply to the Recycled Water Main in Lombard Road and Hess Road Creditable Improvement project which, upon completion, shall be assumed to provide a sufficient potable water demand offset to comply with the City's Zero Water Footprint policy such that the Project shall not be required to pay any Zero Water Footprint fees.

**Section 7**      **Application of Fee Credits**

7.1 Fee Credits provided pursuant to this Agreement are personal to the owner of the Project but are not limited to the Project. Fee Credits may be applied by the owner of the Project to any property located in the City, upon notice from the Developer, in accordance with the form

attached hereto as Exhibit D. Such Fee Credits shall apply to the same type of City fees identified in Section 3.3.

7.2 This Section 7 shall not apply to the Recycled Water Main in Lombard Road and Hess Road Creditable Improvement project which, upon completion, shall be assumed to provide a sufficient potable water demand offset to comply with the City's Zero Water Footprint policy such that the Project shall not be required to pay any Zero Water Footprint fees. The Recycled Water Main in Lombard Road and Hess Road Creditable Improvement project is limited to the Project.

### **Section 8**      **Transfer of Fee Credits and Fee Reimbursements**

8.1 Fee Credits and Fee Reimbursements granted to Developer pursuant to this Agreement may be transferred to other owners, builders, or developers. To effect such a transfer, Developer shall submit a completed form to the City Engineer in substantially the same format as set forth in Exhibit E that will (i) reference this Agreement; (ii) identify the Developer and assignee if Fee Credits or Fee Reimbursements are being assigned to a builder or other party; and (iii) identify the Fee Credit or Fee Reimbursement balance before and after the transfer. The form must be signed by the Developer, its Assignee, and the City Engineer, and an executed copy of the form shall be kept on file. Section 4.4, above, shall apply to any Fee Reimbursements transferred pursuant to this section.

### **Section 9**      **Inspection and Completion**

9.1 City shall, at all times, upon reasonable advance notice, have reasonable access to the construction site during construction of the Creditable Improvements, and Developer shall furnish City with all reasonable information necessary for ascertaining full knowledge of the Creditable Improvements with respect to the progress, workmanship, and character of materials and equipment used and employed in the work.

9.2 Whenever the contractors retained by Developer vary the normal period during which work or any portion of it is carried out on each day, Developer shall give timely notice to the City so that the City's representative may, if he or she wishes, be present to observe the work in progress. Developer shall give timely notice to the City in advance of backfilling or otherwise covering any part of the work so that the City's representative may, if he or she wishes, observe the work before it is concealed.

9.3 Observation of the work by the City shall not relieve Developer of any of its obligations to complete construction in accordance with the plans and specifications approved by the City Engineer.

9.4 At such time as the Developer believes a Creditable Improvement is complete, the Developer shall provide written notice of completion to the City, requesting an inspection. Within ten (10) business days following the date of receipt of the Developer's written notice of completion, the City shall conduct a final inspection of the Creditable Improvements. If, during the final inspection, the City determines that the Creditable Improvements have not been completed in accordance with all applicable codes, regulations, permits and approved plans, the

City shall prepare a punch list of all items to be completed by the Developer and shall provide such punch list to the Developer within five (5) business days following the final inspection, or as soon as practical thereafter. If the City delivers such punch list to the Developer, then the Developer shall undertake to repair such punch list items in a diligent manner within sixty (60) calendar days. Upon completion of the punch list work, the Developer shall request another final inspection from the City and within five (5) business days following such written notice from the Developer, the City shall conduct another final inspection. If the City determines that the punch list work is complete and no other deficiencies are identified, the Developer will be deemed to have successfully completed the final inspection. If the City determines that the punch list work is not complete, then City and Developer shall repeat the inspection/punch list procedures specified in this Section 9.4 until the successful completion of the punch list work and a final inspection. At such time as Developer has successfully completed the final inspection, City shall take all actions necessary to accept the completed Creditable Improvements within thirty (30) calendar days, or as soon as practical, thereafter.

**Section 10 Improvement Security**

10.1 Prior to issuance of the first building permit for the Project, and in accordance with Government Code section 66499 et seq., Developer shall provide, or cause its contractor to provide, improvement security for the Creditable Improvements based on the Estimated Costs thereof in favor of the City in an amount and form acceptable to the City.

**Section 11 Limited City Obligation**

11.1 The obligations arising from this Agreement are not a debt of the City, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts, or revenues, and are payable only from water and sewer capacity fees and rates and traffic impact fees paid to the City.

**Section 12 Conveyance of Creditable Improvements**

12.1 Once Developer has completed construction of the Creditable Improvements and the Creditable Improvements are accepted and deemed satisfactory by the City, the Creditable Improvements automatically become the property of the City. Developer and City shall take any and all actions necessary to convey and vest full, complete and clear title in said facilities to the City.

**Section 13 Delivery of As-Built Plans and Specifications**

13.1 Prior to acceptance of the Creditable Improvements by City, Developer shall deliver to City copies of all as-built plans (if any), specifications, operating manuals, service manuals, warranties and other documents relating to the design, construction, and operation of the Creditable Improvements described in this Agreement.

**Section 14 Liens, Claims, and Encumbrances**

14.1 Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to apply Fee Credits or pay Fee Reimbursements after final acceptances for

the Creditable Improvements until Developer has cleared any and all liens, claims and encumbrances from said facility, and provided the required guarantee documentation, guarantee, and assurance in writing, to the satisfaction of the City. Nothing herein shall prevent the application of Fee Credits prior to final acceptance of the Creditable Improvements, so long as Developer is not otherwise in breach of this Agreement.

**Section 15    Intentionally Deleted. [NOTE TO CITY. THIS IS COVERED IN THE SUBDIVISION IMPROVEMENT AGREEMENT]**

**Section 16    Third Party Liability**

16.1    City does not assume any liability, duty or obligation to Developer's contractors, subcontractors or agents by execution or performance of this Agreement and no contractors, subcontractors, agents or any parties are third party beneficiaries of this Agreement.

**Section 17    Intentionally Deleted. [NOTE TO CITY. THIS IS COVERED IN THE SUBDIVISION IMPROVEMENT AGREEMENT]**

17.1    **Section 18    Binding on Successors and Assigns**

18.1    Each and every provision of this Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto, in the same manner as if such parties had been expressly named herein.

18.2    Developer shall have the right to assign or transfer this Agreement to any person, firm, or corporation at any time during the term of the Agreement. Developer shall provide City with written notice of any assignment or transfer of this Agreement no later than thirty (30) days after such assignment or transfer. Express written assumption by such assignee or transferee of the burdens and obligations of the Agreement shall release and relieve Developer of such burdens and obligations.

**Section 19    Authority to Enter into Agreement**

19.1    Developer and City certify that they are legally empowered to enter into this Agreement.

**Section 20    Notice**

20.1    Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:                    City of American Canyon  
                              Public Works Department  
                              4381 Broadway Street, Suite 201  
                              American Canyon, CA 94503  
                              Attn: \_\_\_\_\_

Developer: R.H. Hess Development Company, Inc.  
3423 Broadway Street, Suite D-5  
American Canyon, CA 94503  
Attn: Richard Hess

20.2 Either party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, and instruments shall be delivered to it.

**Section 21**    **Term**

21.1 The term of this Agreement shall start on the day and year duly executed by all parties and shall remain in effect for a period of ten (10) years or until all the terms and conditions contained in this Agreement have been satisfied, whichever comes first.

21.2 Notwithstanding Section 21.1, any outstanding Fee Credits or Fee Reimbursements due to Developer or its transfers, successors, or assigns shall survive termination of this Agreement.

**Section 22**    **Captions**

22.1 Captions to Sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

**Section 23**    **Severability**

23.1 If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

**Section 24**    **Governing Law; Venue**

24.1 This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Napa, State of California.

**Section 25**    **Exhibits**

25.1 The Exhibits attached hereto are hereby incorporated herein by this reference. In the event of any conflict between this Agreement and its Exhibits, the provisions of this Agreement shall govern.

**Section 26**    **Entire Agreement**

26.1 This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both parties.

26.2 Notwithstanding the above, Developer and City have entered into a that certain Subdivision Improvement Agreement, dated of even date herewith (“Subdivision Improvement Agreement”). The provisions of the Subdivision Improvement Agreement shall continue to apply to the Improvements (as defined therein).

**Section 27**    **Counterparts**

27.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.

**Section 28**    **Construction and Interpretation**

28.1 Developer and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party.

**Section 29**    **Appeals/Dispute Resolution**

29.1 Developer may appeal any final determination by the City Engineer to the City Manager and thereafter to the City Council. Prior to submitting the matter to the City Council, the City Manager may, in his/her discretion, elect to engage the services of a mediator to attempt to mediate the dispute in a non-binding fashion, not to exceed a total of thirty (30) calendar days. Any decision of the City Council shall be final with no right of further appeal or action thereafter.

**Section 30**    **Effective Date**

30.1 The date of approval by the City Council of this Agreement shall be deemed to be the “**Effective Date**” of this Agreement. Upon execution of this Agreement by the City, the City shall insert the Effective Date in the Preamble to this Agreement and provide a copy of this fully executed and dated Agreement to Developer.

**IN WITNESS WHEREOF**, the City of American Canyon, a municipal corporation, has authorized the execution of this Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No. \_\_\_\_\_, adopted by the Council of the City of American Canyon on the 3rd day of May, 2022, and Developer has caused this Agreement to be executed.

[SIGNATURES ON FOLLOWING PAGE(S)]

**CITY:**

CITY OF AMERICAN CANYON,  
a municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Manager

**DEVELOPER:**

R.H. HESS DEVELOPMENT COMPANY,  
INC.

\_\_\_\_\_  
By: Richard Hess  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Attorney

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Public Works Director

**EXHIBIT A**  
**[Project Location Map]**

**EXHIBIT B**  
**[Figures of Improvements]**

## EXHIBIT C

### [List/Description of Improvements]

1. Napa Junction Road Improvements:
  - a. Construct an approximately 300-foot segment of Napa Junction Road between the Hess Road/Napa Junction Road intersection and the existing roadway fronting Napa Junction Magnet Elementary School. The preliminary roadway shall have a curb-to-curb width of 40-feet with 5-foot wide (includes curb width) attached sidewalks on both sides. The final roadway section shall be as determined by the City Engineer. The extent of the roadway construction may be extended as necessary to meet City roadway geometric standards.
  - b. Construct a new 5-foot wide (includes curb width) attached sidewalk along the south side of Napa Junction Road between the east end of the new road segment described above to the existing sidewalk approximately 100-feet west of Theresa Avenue.
  - c. Construct a new 5-foot wide attached sidewalk along the south side of Napa Junction Road between its intersection with Hess Road and the west end of Parcel A's frontage.
2. Water Main Replacement in Napa Junction Road: Replace approximately 590 linear feet of the existing 6-inch water main in Napa Junction Road with a new 12-inch water main between the intersection with Theresa Avenue to the intersection with Hess Road, connecting to the existing water mains in those intersections.
3. Sanitary Sewer Main Replacement in Napa Junction Road and Theresa Avenue: Replace approximately 1,800 linear feet of the existing 6-inch sanitary sewer mains in Napa Junction Road between Hess Road and Theresa Avenue and in Theresa Avenue from Napa Junction Road to a point approximately 1,200 linear feet south thereof with new 8-inch and 10-inch sanitary sewer mains. The Engineer of Record shall conduct a capacity analysis for the new sanitary sewers to determine where it should upsize from 8-inch to 10-inch.
4. Recycled Water Main in Lombard Road and Hess Road: Install approximately 1,300 linear feet of a new 8-inch recycled water main in Lombard Road between the cul-de-sac at its northern terminus and Hess Drive and in Hess Drive between Lombard Road and the Little League fields.
5. Water Main Extension: Install approximately 1,310 linear feet of 12-inch water main in Napa Junction Road from the intersection of Hess Road to the Oat Hill Tank #2, connecting to the existing 12-inch water mains.

**EXHIBIT D**

**Form of Certificate of Application of Fee Credits**

The undersigned Developer, as the holder of certain Fee Credits related to the Fee Credit / Fee Reimbursement Agreement between Developer and the City of American Canyon, dated \_\_\_\_\_ (the "Agreement"), hereby elects to apply the amount of Fee Credits indicated below as a credit against the fees otherwise payable in connection with the issuance of building permit(s) for development of the property within the City described below:

Developer's Legal Name: \_\_\_\_\_

Project Name: \_\_\_\_\_

Amount of Applied Fee Credits:     \$ \_\_\_\_\_

Fee Credit Balance Available under Agreement Before Application:     \$ \_\_\_\_\_

Fee Credit Balance Available under Agreement After Application:     \$ \_\_\_\_\_

APPROVED: City Engineer: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**

**Form of Certificate of Assignment and Transfer of Fee Credit / Fee Reimbursement**

The undersigned Developer, as the holder of certain Fee Credits or Fee Reimbursements related to the Fee Credit / Fee Reimbursement Agreement between Developer and the City of American Canyon, dated \_\_\_\_\_ (the "Agreement"), hereby assigns, transfers and conveys to the undersigned Assignee the amount of Fee Credits or Fee Reimbursements as indicated below:

Developer's Legal Name: \_\_\_\_\_

Assignee's Name: \_\_\_\_\_

Amount of Assigned Fee Credits/Reimbursements: \$ \_\_\_\_\_

Fee Credit/Reimbursement Balance Available under Agreement Before Transfer: \$ \_\_\_\_\_

Fee Credit/Reimbursement Balance Available under Agreement After Transfer: \$ \_\_\_\_\_

APPROVED: City Engineer: \_\_\_\_\_

**DEVELOPER:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Contact Information: \_\_\_\_\_

## OWNER'S STATEMENT

THE UNDERSIGNED, CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; HEREBY STATES THAT THEY ARE THE ONLY ENTITIES HAVING RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION HEREON ENTITLED "FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES" CONSISTING OF 7 SHEETS; THAT THEY DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS A NON-EXCLUSIVE EASEMENT FOR PUBLIC PURPOSES:

1. "PUBLIC UTILITY EASEMENT" OR "PUE" FOR THE PURPOSED OF PUBLIC UTILITIES ON, ACROSS, UNDER, AND OVER THOSE DESIGNATED AREAS.
2. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.
3. "WATER LINE EASEMENT" OR "WLE" FOR THE PURPOSED OF PUBLIC WATER LINE ON, ACROSS, UNDER, AND OVER THOSE DESIGNATED AREAS.
4. "TRAIL EASEMENT" OR "TE" FOR THE PURPOSE OF PUBLIC PEDESTRIAN INGRESS AND EGRESS ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.

AS OWNER:  
CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY;

CG AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: CG MANAGER LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

TC AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: TC MANAGER LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

JSP AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: JSP MANAGER LLC,  
A DELAWARE LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## RECORDER'S STATEMENT

FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 202\_\_\_\_, AT \_\_\_\_\_ M., IN

BOOK \_\_\_\_\_ OF RECORD MAPS AT PAGES \_\_\_\_\_ THROUGH \_\_\_\_\_, INCLUSIVE, COUNTY OF NAPA,

STATE OF CALIFORNIA, AT THE REQUEST OF THE CITY OF AMERICAN CANYON.

FILE NO. \_\_\_\_\_ FEES: \_\_\_\_\_

JOHN TUTEUR  
COUNTY RECORDER IN AND FOR THE COUNTY  
OF NAPA, STATE OF CALIFORNIA.

DEPUTY COUNTY RECORDER  
COUNTY OF NAPA  
STATE OF CALIFORNIA

## BENEFICIARY'S STATEMENT

M&T BANK, A NEW YORK BANKING CORPORATION, AS BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST RECORDED OCTOBER 25, 2022, AS INSTRUMENT NUMBER 2022-0019521, OF OFFICIAL RECORDS OF NAPA COUNTY, CALIFORNIA, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THE MAP AND JOINS IN ALL OFFERS OF DEDICATION THEREON.

M&T BANK, A NEW YORK BANKING CORPORATION

BY: \_\_\_\_\_  
NAME: RYAN WIRTZ  
VICE PRESIDENT  
M&T BANK, N.A.

## BENEFICIARY'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES

CONSISTING OF 7 SHEETS  
BEING A SUBDIVISION OF PARCEL ONE AS DESCRIBED IN THAT  
CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-0010758,  
NAPA COUNTY RECORDS.

APN: 058-380-008 AND PORTION OF 058-320-001, 1 PARCEL, 13.60 AC +/-  
CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



CIVIL ENGINEERS SURVEYORS PLANNERS

SAN RAMON (925) 866-0322  
ROSEVILLE (916) 788-4456  
WWW.CBANDG.COM

SEPTEMBER 2024

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION, THAT IT IS SUBSTANTIALLY THE SAME AS THE TENTATIVE PARCEL MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY ORDINANCES APPLICABLE AT THE TIME OF APPROVAL HAVE BEEN COMPLIED WITH.

NAME: \_\_\_\_\_  
 ERICA AHMANN SMITHIES  
 CITY ENGINEER, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA  
 RCE 65468

DATE: \_\_\_\_\_



I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

NAME: \_\_\_\_\_  
 ANTHONY G. CINQUINI  
 STATE OF CALIFORNIA  
 PLS 8614

DATE: \_\_\_\_\_



## CITY CLERK'S CERTIFICATE

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AT A REGULAR MEETING HELD ON THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_ HAS APPROVED THIS MAP ENTITLED "FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES" AND HAS ACCEPTED ON BEHALF OF THE CITY OF AMERICAN CANYON PUBLIC, THE FOLLOWING DEDICATIONS SHOWN HEREON IN THE BODY OF SAID MAP:

- "PUBLIC UTILITY EASEMENT" OR "PUE" IS RESERVED FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, UNDER, AND OVER THOSE DESIGNATED AREAS.
- "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.
- "WATER LINE EASEMENT", OR "WLE" FOR THE PURPOSE OF PUBLIC WATER LINE ON, ACROSS, UNDER, AND OVER THOSE DESIGNATED AREAS.
- "TRAIL EASEMENT", OR "TE" FOR THE PURPOSE OF PUBLIC PEDESTRIAN INGRESS AND EGRESS ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.

\_\_\_\_\_  
 TARESA GEILFUSS  
 CITY CLERK, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA

DATE \_\_\_\_\_

## COUNTY TAX COLLECTOR AND REDEMPTION OFFICER'S CERTIFICATE

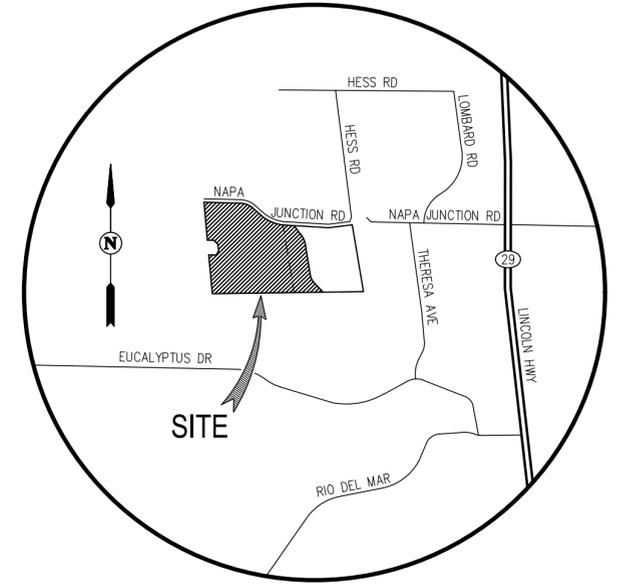
I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES (EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE) AGAINST ANY PART OF THE LAND INCLUDED IN THE WITHIN SUBDIVISION, AND THAT SECURITY IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN FILED WITH THE COUNTY TAX COLLECTOR AND REDEMPTION OFFICER TO GUARANTEE THE PAYMENT OF ALL TAXES AND ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOW A LIEN AGAINST THE PROPERTY IN THE WITHIN SUBDIVISION, BUT WHICH ARE NOT YET PAYABLE.

\_\_\_\_\_  
 ROBERT G. MINAHEN  
 COUNTY TAX COLLECTOR AND  
 REDEMPTION OFFICER  
 COUNTY OF NAPA, STATE OF CALIFORNIA

DATE: \_\_\_\_\_

DEPUTY

DATE: \_\_\_\_\_



VICINITY MAP  
 NOT TO SCALE

## SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; IN SEPTEMBER OF 2022. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS WITHIN TWO YEARS OF THE FILING OF THIS MAP, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

DATE \_\_\_\_\_



\_\_\_\_\_  
 MARK H. WEBBER, P.L.S.  
 L.S. NO. 7960

## SIGNATURE OMISSIONS

PARTIES LISTED BELOW, OWNERS OF EASEMENTS PER DOCUMENTS NOTED BELOW HAVE BEEN OMITTED UNDER PROVISIONS OF SECTION 66436(a)(3)(A)(1) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO FEE TITLE AND SAID SIGNATURES ARE NOT REQUIRED BY THE GOVERNING BODY:

- AMERICAN CANYON COUNTY WATER DISTRICT: EASEMENT FOR PUBLIC WATER LINES PER BOOK 1338, PAGE 787 OF OFFICIAL RECORDS.
- AMERICAN CANYON COUNTY WATER DISTRICT: EASEMENT FOR PUBLIC WATER LINES PER BOOK 1338, PAGE 791 OF OFFICIAL RECORDS AND FINAL MAP OF OAT HILL UNIT NO.11 (14 RM 4).
- PACIFIC GAS AND ELECTRIC COMPANY, A CALIFORNIA CORPORATION AND PACIFIC BELL, A CALIFORNIA CORPORATION: EASEMENT FOR ELECTRICAL FACILITIES AND COMMUNICATION FACILITIES PER BOOK 1355, PAGE 779, OF OFFICIAL RECORDS.

## FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES

CONSISTING OF 7 SHEETS  
 BEING A SUBDIVISION OF PARCEL ONE AS DESCRIBED IN THAT  
 CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-0010758,  
 NAPA COUNTY RECORDS.

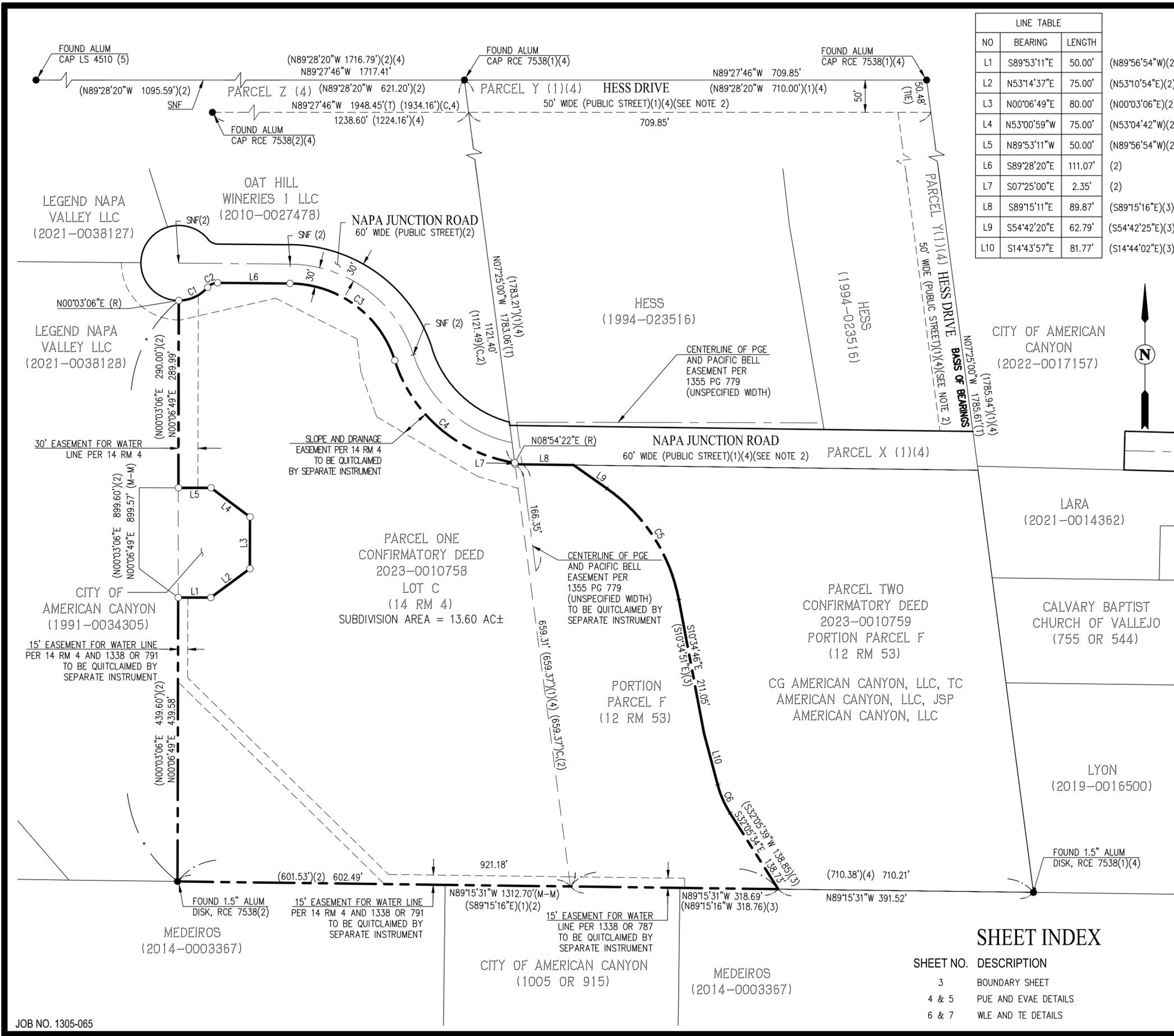
APN: 058-380-008 AND PORTION OF 058-320-001, 1 PARCEL, 13.60 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



CIVIL ENGINEERS SURVEYORS PLANNERS

SAN RAMON (925) 866-0322  
 ROSEVILLE (916) 788-4456  
 WWW.CBANDG.COM

SEPTEMBER 2024



LINE TABLE		
NO	BEARING	LENGTH
L1	S89°53'11"E	50.00'
L2	N53°14'37"E	75.00'
L3	N00°06'49"E	80.00'
L4	N53°00'59"W	75.00'
L5	N89°53'11"W	50.00'
L6	S89°28'20"E	111.07'
L7	S07°25'00"E	2.35'
L8	S89°15'11"E	89.87'
L9	S54°42'20"E	62.79'
L10	S14°43'57"E	81.77'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	58.00'	49°39'20"	50.27' (2)
C2	20.00'	50°07'54"	17.50' (2)
C3	170.00'	72°04'56"	213.87' (2)

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C4	230.00'	63°42'14"	255.72' (2)
C5	272.00'	44°07'34"	209.48' (3)
C6	160.00'	17°21'37"	48.48' (3)

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- PUE, WLE, TE, & EVAE LINE
- TIE LINE
- CENTERLINE
- C CALCULATED
- (T) TOTAL
- (R) RADIAL BEARING
- (M-M) MONUMENT TO MONUMENT
- FOUND MONUMENT AS NOTED
- SET 5/8" REBAR AND CAP, OR NAIL AND TAG LS 7960
- ALUM ALUMINUM
- PUE PUBLIC UTILITY EASEMENT
- WLE WATER LINE EASEMENT
- EVAE EMERGENCY VEHICLE ACCESS EASEMENT
- TE TRAIL EASEMENT
- SNF SEARCHED FOR NOT FOUND

**NOTE:**

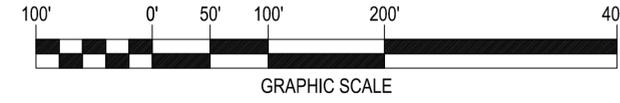
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- PARCELS X AND Y SHOWN HEREON WERE IRREVOCABLY OFFERED TO THE COUNTY FOR STREET PURPOSES ON 12 RM 53 (1). OFFER WAS NEITHER ACCEPTED NOR REJECTED ON SAID MAP AND CURRENT STATUS IS UNKNOWN.

**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
- (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
- (3) CONFIRMATORY DEED 2023-0010758
- (4) PARCEL MAP (9 PM 68)
- (5) RECORD OF SURVEY (37 RS 31)

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



**FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES**

CONSISTING OF 7 SHEETS  
BEING A SUBDIVISION OF PARCEL ONE AS DESCRIBED IN THAT CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-0010758, NAPA COUNTY RECORDS.

APN: 058-380-008 AND PORTION OF 058-320-001, 1 PARCEL, 13.60 AC +/- CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



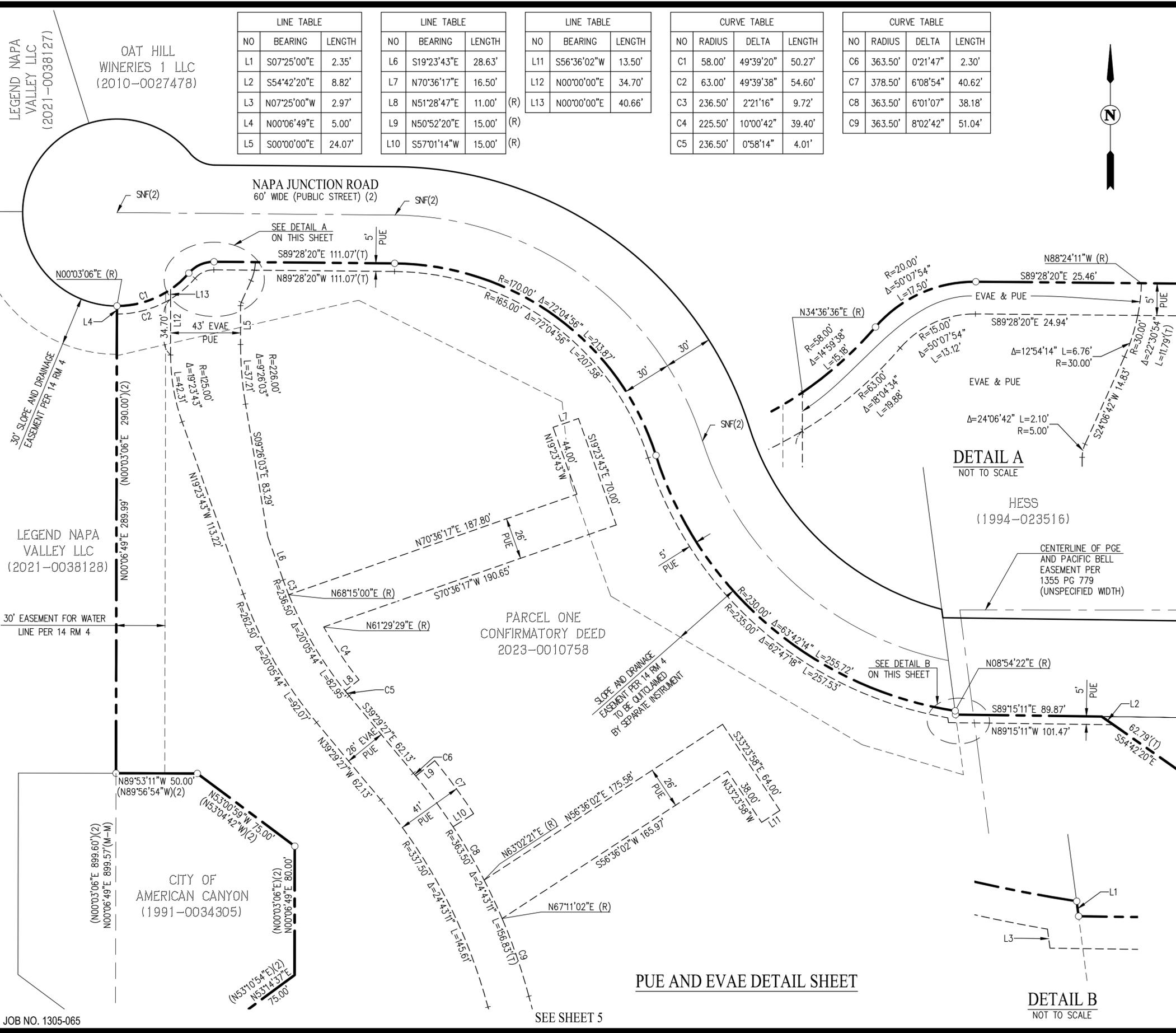
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CIVIL ENGINEERS SURVEYORS PLANNERS

SCALE: 1" = 100' SEPTEMBER 2024

**SHEET INDEX**

SHEET NO.	DESCRIPTION
3	BOUNDARY SHEET
4 & 5	PUE AND EVAE DETAILS
6 & 7	WLE AND TE DETAILS



LINE TABLE		
NO	BEARING	LENGTH
L1	S07°25'00"E	2.35'
L2	S54°42'20"E	8.82'
L3	N07°25'00"W	2.97'
L4	N00°06'49"E	5.00'
L5	S00°00'00"E	24.07'

LINE TABLE		
NO	BEARING	LENGTH
L6	S19°23'43"E	28.63'
L7	N70°36'17"E	16.50'
L8	N51°28'47"E	11.00' (R)
L9	N50°52'20"E	15.00' (R)
L10	S57°01'14"W	15.00' (R)

LINE TABLE		
NO	BEARING	LENGTH
L11	S56°36'02"W	13.50'
L12	N00°00'00"E	34.70'
L13	N00°00'00"E	40.66'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	58.00'	49°39'20"	50.27'
C2	63.00'	49°39'38"	54.60'
C3	236.50'	2°21'16"	9.72'
C4	225.50'	10°00'42"	39.40'
C5	236.50'	0°58'14"	4.01'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C6	363.50'	0°21'47"	2.30'
C7	378.50'	6°08'54"	40.62'
C8	363.50'	6°01'07"	38.18'
C9	363.50'	8°02'42"	51.04'



**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- PUE, WLE, TE, & EVAE LINE
- TIE LINE
- CENTERLINE
- CALCULATED
- TOTAL
- RADIAL BEARING
- MONUMENT TO MONUMENT
- FOUND MONUMENT AS NOTED
- SET 5/8" REBAR AND CAP, OR NAIL AND TAG LS 7960
- ALUMINUM
- PUBLIC UTILITY EASEMENT
- WATER LINE EASEMENT
- EMERGENCY VEHICLE ACCESS EASEMENT
- TRAIL EASEMENT
- SEARCHED FOR NOT FOUND

**NOTE:**

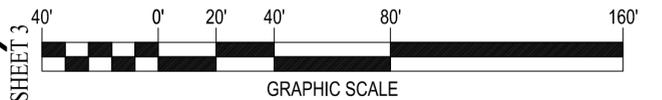
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**BASIS OF BEARINGS:**

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APN: 058-380-008 AND PORTION OF 058-320-001, 1 PARCEL, 13.60 AC +/- CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



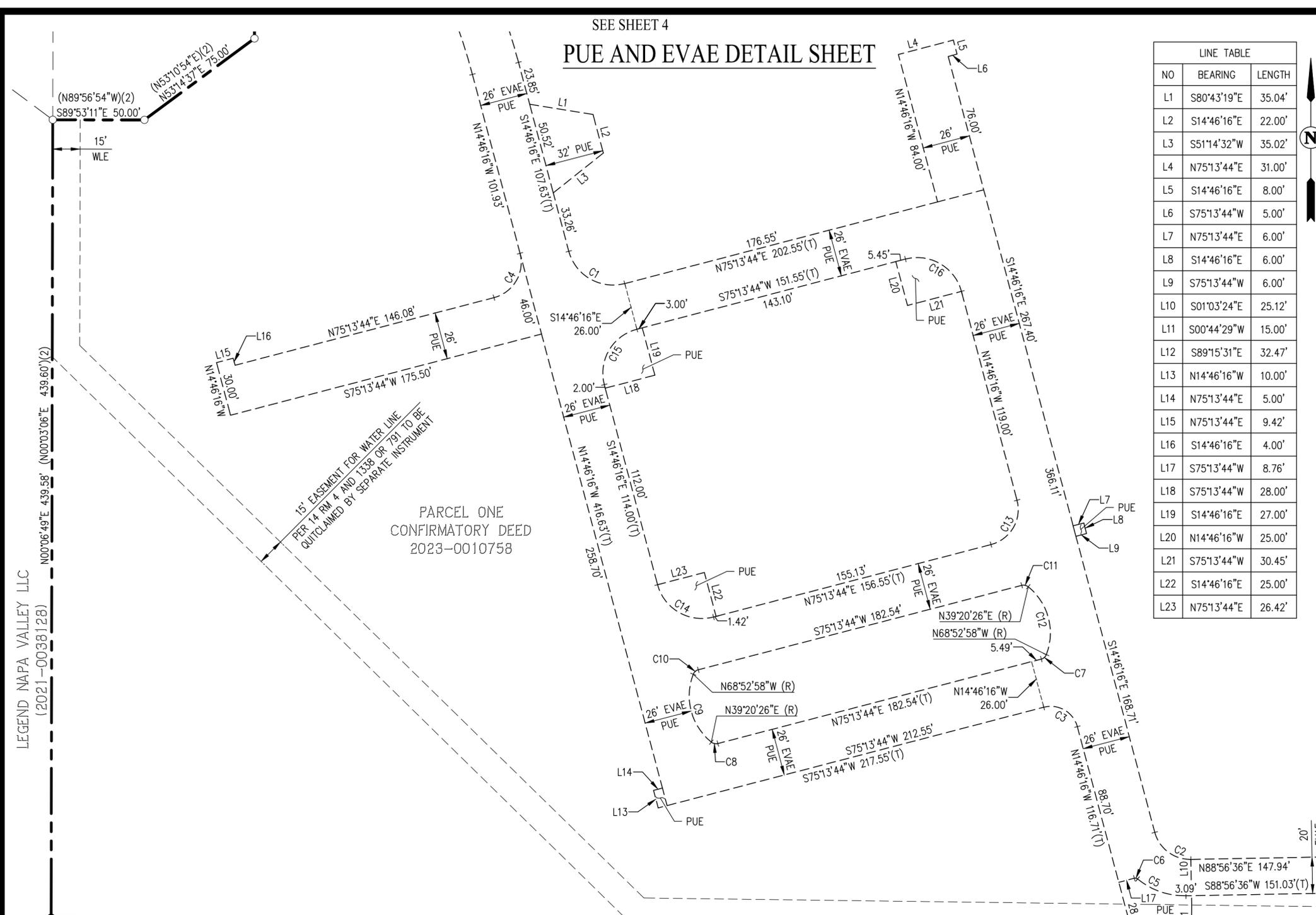
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CIVIL ENGINEERS SURVEYORS PLANNERS

SCALE: 1" = 40' SEPTEMBER 2024

**DETAIL B**  
NOT TO SCALE

**PUE AND EVAE DETAIL SHEET**

SEE SHEET 4  
**PUE AND EVAE DETAIL SHEET**



LINE TABLE		
NO	BEARING	LENGTH
L1	S80°43'19"E	35.04'
L2	S14°46'16"E	22.00'
L3	S51°14'32"W	35.02'
L4	N75°13'44"E	31.00'
L5	S14°46'16"E	8.00'
L6	S75°13'44"W	5.00'
L7	N75°13'44"E	6.00'
L8	S14°46'16"E	6.00'
L9	S75°13'44"W	6.00'
L10	S01°03'24"E	25.12'
L11	S00°44'29"W	15.00'
L12	S89°15'31"E	32.47'
L13	N14°46'16"W	10.00'
L14	N75°13'44"E	5.00'
L15	N75°13'44"E	9.42'
L16	S14°46'16"E	4.00'
L17	S75°13'44"W	8.76'
L18	S75°13'44"W	28.00'
L19	S14°46'16"E	27.00'
L20	N14°46'16"W	25.00'
L21	S75°13'44"W	30.45'
L22	S14°46'16"E	25.00'
L23	N75°13'44"E	26.42'

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
- ADJACENT PROPERTY LINE
- PUE, WLE, TE, & EVAE LINE
- TIE LINE
- CENTERLINE
- C CALCULATED
- (T) TOTAL
- (R) RADIAL BEARING
- (M-M) MONUMENT TO MONUMENT
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GRAPHIC SCALE

**FINAL MAP OF PARCEL ONE FOR CONDOMINIUM PURPOSES**

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**cbg** CIVIL ENGINEERS SURVEYORS PLANNERS

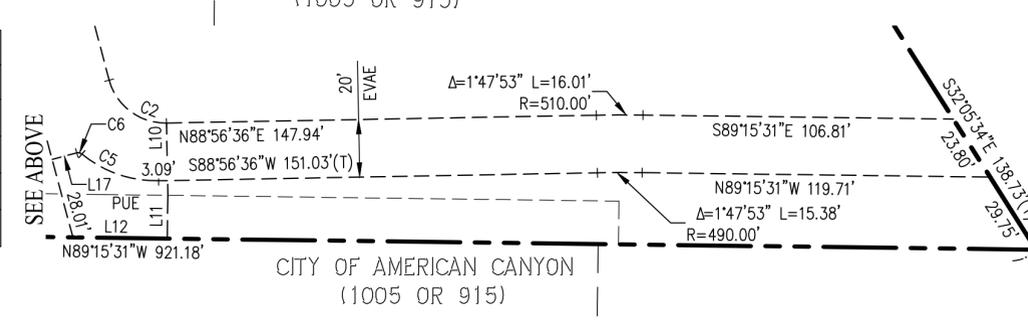
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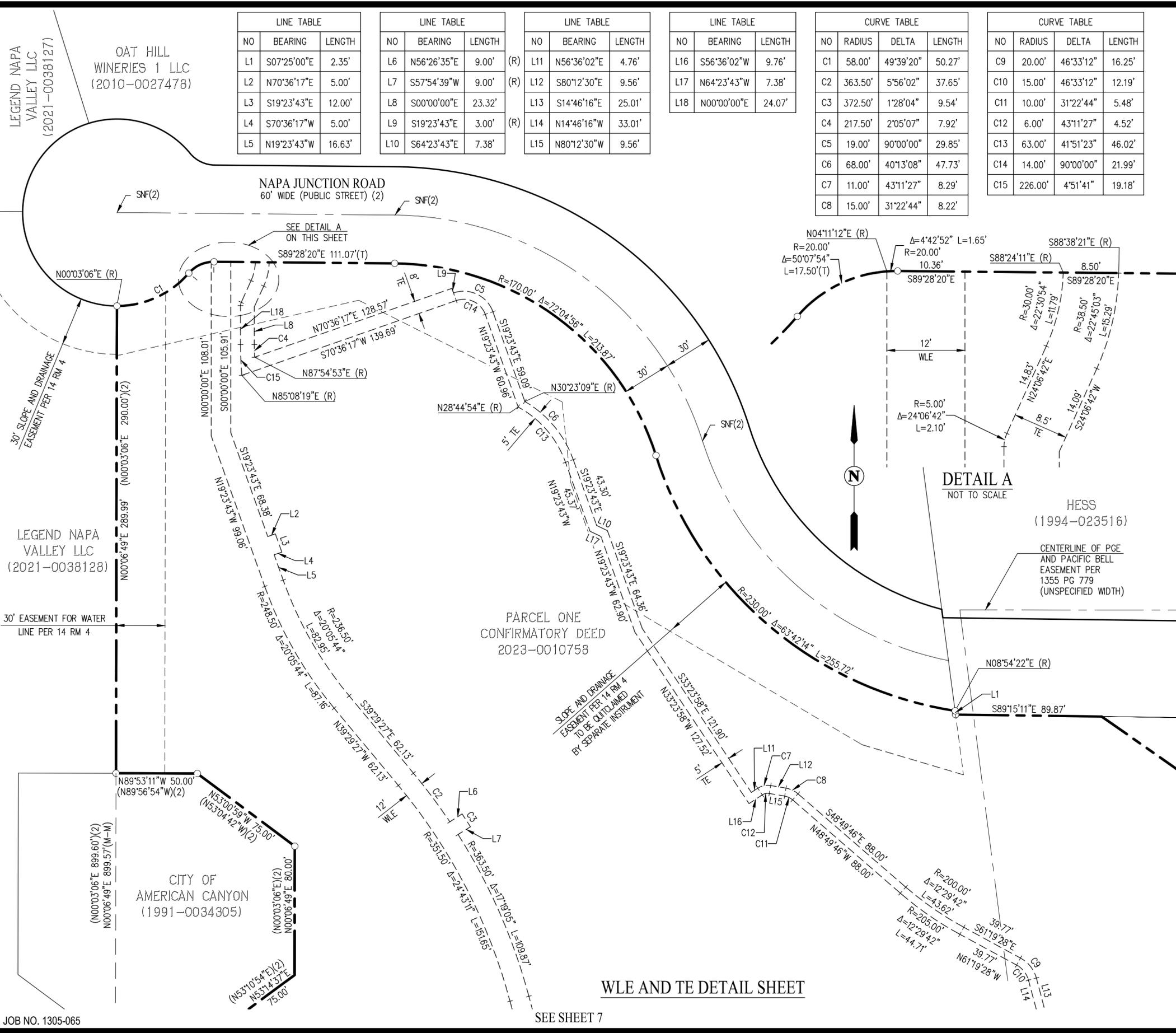
SCALE: 1" = 40' SEPTEMBER 2024

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	25.00'	90°00'00"	39.27'
C2	20.00'	76°17'08"	26.63'
C3	15.00'	90°00'00"	23.56'
C4	20.00'	90°00'00"	31.42'
C5	40.00'	40°53'57"	28.55'
C6	2.00'	54°36'49"	1.91'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C7	4.00'	54°06'42"	3.78'
C8	4.00'	54°06'42"	3.78'
C9	33.00'	71°46'36"	41.34'
C10	4.00'	54°06'42"	3.78'
C11	4.00'	54°06'42"	3.78'
C12	33.00'	71°46'36"	41.34'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C13	20.00'	90°00'00"	31.42'
C14	25.00'	90°00'00"	39.27'
C15	25.00'	90°00'00"	39.27'
C16	25.00'	90°00'00"	39.27'





LINE TABLE		
NO	BEARING	LENGTH
L1	S07°25'00"E	2.35'
L2	N70°36'17"E	5.00'
L3	S19°23'43"E	12.00'
L4	S70°36'17"W	5.00'
L5	N19°23'43"W	16.63'

LINE TABLE		
NO	BEARING	LENGTH
L6	N56°26'35"E	9.00' (R)
L7	S57°54'39"W	9.00' (R)
L8	S00°00'00"E	23.32'
L9	S19°23'43"E	3.00' (R)
L10	S64°23'43"E	7.38'

LINE TABLE		
NO	BEARING	LENGTH
L11	N56°36'02"E	4.76'
L12	S80°12'30"E	9.56'
L13	S14°46'16"E	25.01'
L14	N14°46'16"W	33.01'
L15	N80°12'30"W	9.56'

LINE TABLE		
NO	BEARING	LENGTH
L16	S56°36'02"W	9.76'
L17	N64°23'43"W	7.38'
L18	N00°00'00"E	24.07'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	58.00'	49°39'20"	50.27'
C2	363.50'	5°56'02"	37.65'
C3	372.50'	1°28'04"	9.54'
C4	217.50'	2°05'07"	7.92'
C5	19.00'	90°00'00"	29.85'
C6	68.00'	40°13'08"	47.73'
C7	11.00'	43°11'27"	8.29'
C8	15.00'	31°22'44"	8.22'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C9	20.00'	46°33'12"	16.25'
C10	15.00'	46°33'12"	12.19'
C11	10.00'	31°22'44"	5.48'
C12	6.00'	43°11'27"	4.52'
C13	63.00'	41°51'23"	46.02'
C14	14.00'	90°00'00"	21.99'
C15	226.00'	4°51'41"	19.18'

### LEGEND

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
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### NOTE:

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SCALE: 1" = 40' SEPTEMBER 2024

SEE SHEET 6  
WLE AND TE DETAIL SHEET

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	22.00'	90°00'00"	34.56'
C2	17.50'	26°48'23"	8.19'
C3	22.50'	26°48'23"	10.53'
C4	28.00'	90°00'00"	43.98'
C5	16.00'	35°55'58"	10.03'
C6	26.50'	24°56'16"	11.53'
C7	31.50'	79°00'18"	43.44'
C8	26.50'	79°00'18"	36.54'
C9	31.50'	24°56'16"	13.71'
C10	11.00'	35°55'58"	6.90'
C11	23.00'	90°00'00"	36.13'
C12	17.50'	28°21'12"	8.66'
C13	22.50'	28°21'12"	11.13'
C14	16.50'	90°00'00"	25.92'

**LEGEND**

- SUBDIVISION BOUNDARY LINE
- RIGHT OF WAY LINE
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- PUE, WLE, TE, & EVAE LINE
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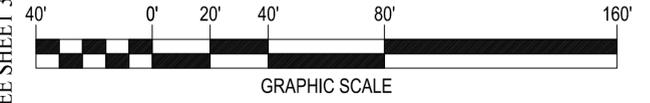
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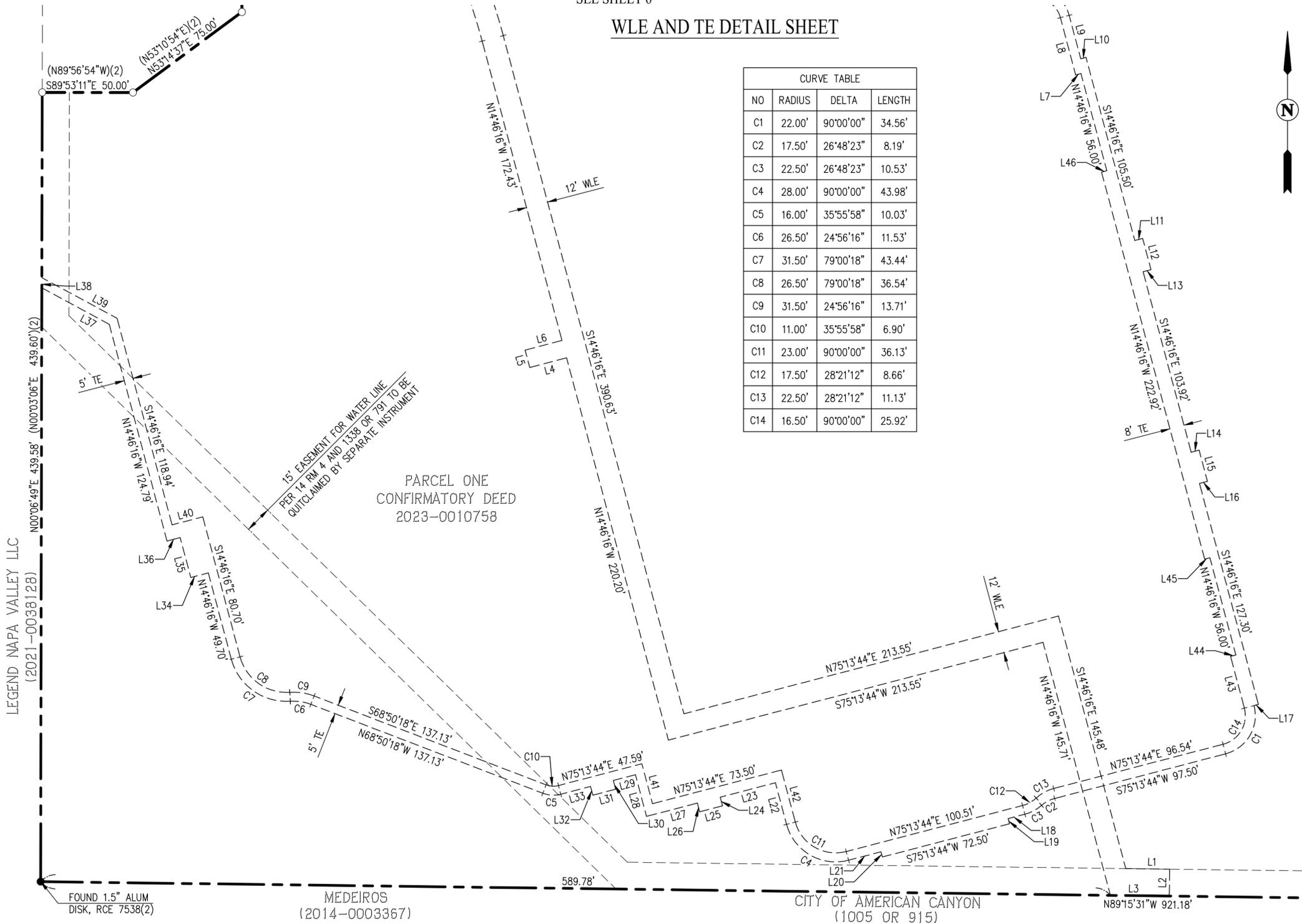
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SCALE: 1" = 40' SEPTEMBER 2024



LINE TABLE		
NO	BEARING	LENGTH
L1	S89°15'31"E	24.18'
L2	S00°44'29"W	15.00'
L3	N89°15'31"W	32.47'
L4	S75°13'44"W	21.00'
L5	N14°46'16"W	10.00'
L6	N75°13'44"E	21.00'

LINE TABLE		
NO	BEARING	LENGTH
L7	S75°13'44"W	3.00'
L8	N14°46'16"W	33.01'
L9	S14°46'16"E	25.01'
L10	N75°13'44"E	3.00'
L11	N75°13'44"E	4.50'
L12	S14°46'16"E	18.00'

LINE TABLE		
NO	BEARING	LENGTH
L13	S75°13'44"W	4.50'
L14	N75°13'44"E	4.50'
L15	S14°46'16"E	18.00'
L16	S75°13'44"W	4.50'
L17	S75°13'44"W	2.50'
L18	S75°13'44"W	9.57'

LINE TABLE		
NO	BEARING	LENGTH
L19	S14°46'16"E	3.00'
L20	N14°46'16"W	3.00'
L21	S75°13'44"W	18.45'
L22	N14°46'16"W	24.00'
L23	S75°13'44"W	31.50'
L24	S14°46'16"E	5.00'

LINE TABLE		
NO	BEARING	LENGTH
L25	S75°13'44"W	13.00'
L26	N14°46'16"W	5.00'
L27	S75°13'44"W	29.00'
L28	N14°46'16"W	24.00'
L29	S75°13'44"W	12.59'
L30	S14°46'16"E	5.00'

LINE TABLE		
NO	BEARING	LENGTH
L31	S75°13'44"W	13.00'
L32	N14°46'16"W	5.00'
L33	S75°13'44"W	17.00'
L34	S75°13'44"W	10.00'
L35	N14°46'16"W	23.00'
L36	S75°13'44"W	7.50'

LINE TABLE		
NO	BEARING	LENGTH
L37	N61°20'14"W	42.40'
L38	N00°06'49"E	5.69'
L39	S61°20'14"E	47.28'
L40	N75°13'44"E	17.50'
L41	S14°46'16"E	23.00'
L42	S14°46'16"E	30.00'

LINE TABLE		
NO	BEARING	LENGTH
L43	N14°46'16"W	29.80'
L44	N75°13'44"E	3.00'
L45	S75°13'44"W	3.00'
L46	N75°13'44"E	3.00'

## OWNER'S STATEMENT

THE UNDERSIGNED, CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; HEREBY STATE THAT THEY ARE THE ONLY ENTITIES HAVING RECORD TITLE INTEREST IN THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION HEREON ENTITLED "FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES" CONSISTING OF 5 SHEETS; THAT THEY DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF SAID MAP.

THE REAL PROPERTY DESCRIBED BELOW IS IRREVOCABLY OFFERED FOR DEDICATION TO THE CITY OF AMERICAN CANYON IN FEE FOR PUBLIC ROAD AND UTILITY PURPOSES:

1. PARCEL X

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED TO THE CITY OF AMERICAN CANYON AS A NON-EXCLUSIVE EASEMENT FOR PUBLIC PURPOSES:

1. "PUBLIC UTILITY EASEMENT" OR "PUE" FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, UNDER AND OVER THOSE DESIGNATED AREAS.
2. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.

AS OWNER:  
CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY;

CG AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: CG MANAGER LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

TC AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: TC MANAGER LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

JSP AMERICAN CANYON, LLC,  
A DELAWARE LIMITED LIABILITY COMPANY

BY: JSP MANAGER LLC,  
A DELAWARE LIMITED LIABILITY COMPANY,  
ITS MANAGER

BY: \_\_\_\_\_  
NAME: SUZANN CABLING  
TITLE: CHIEF FINANCIAL OFFICER

## OWNER'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## RECORDER'S STATEMENT

FILED FOR RECORD THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, AT \_\_\_\_ M., IN

BOOK \_\_\_\_ OF RECORD MAPS AT PAGES \_\_\_\_ THROUGH \_\_\_\_\_, INCLUSIVE, COUNTY OF NAPA,

STATE OF CALIFORNIA, AT THE REQUEST OF THE CITY OF AMERICAN CANYON.

FILE NO. \_\_\_\_\_ FEES: \_\_\_\_\_

JOHN TUTEUR  
COUNTY RECORDER IN AND FOR THE COUNTY  
OF NAPA, STATE OF CALIFORNIA.

\_\_\_\_\_  
DEPUTY COUNTY RECORDER  
COUNTY OF NAPA  
STATE OF CALIFORNIA

## BENEFICIARY'S STATEMENT

M&T BANK, A NEW YORK BANKING CORPORATION, AS BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST RECORDED OCTOBER 25, 2022, AS INSTRUMENT NUMBER 2022-0019521, OF OFFICIAL RECORDS OF NAPA COUNTY, CALIFORNIA, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THE MAP AND JOINS IN ALL OFFERS OF DEDICATION THEREON.

M&T BANK, A NEW YORK BANKING CORPORATION

BY: \_\_\_\_\_  
NAME: RYAN WIRTZ  
VICE PRESIDENT  
M&T BANK, N.A.

## BENEFICIARY'S ACKNOWLEDGMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF \_\_\_\_\_ } SS.  
COUNTY OF \_\_\_\_\_ }

ON \_\_\_\_\_, BEFORE ME, \_\_\_\_\_, A NOTARY PUBLIC, PERSONALLY APPEARED \_\_\_\_\_, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND THAT BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: \_\_\_\_\_

NAME (PRINT): \_\_\_\_\_

PRINCIPAL COUNTY OF BUSINESS: \_\_\_\_\_

MY COMMISSION NUMBER: \_\_\_\_\_

MY COMMISSION EXPIRES: \_\_\_\_\_

## FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES

CONSISTING OF 5 SHEETS  
BEING A SUBDIVISION OF PARCEL TWO AS DESCRIBED IN THAT  
CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-001759,  
NAPA COUNTY RECORDS.

APN: PORTION OF 058-320-001, 1 PARCEL, 7.12 AC +/-  
CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



SAN RAMON ■ (925) 866-0322  
ROSEVILLE ■ (916) 788-4456  
WWW.CBANDG.COM

CIVIL ENGINEERS ■ SURVEYORS ■ PLANNERS

SEPTEMBER 2024

## CITY ENGINEER'S STATEMENT

I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION, THAT IT IS SUBSTANTIALLY THE SAME AS THE TENTATIVE PARCEL MAP AND ANY APPROVED ALTERATIONS THEREOF AND THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND CITY ORDINANCES APPLICABLE AT THE TIME OF APPROVAL HAVE BEEN COMPLIED WITH.

NAME: \_\_\_\_\_  
 ERICA AHMANN SMITHIES  
 CITY ENGINEER, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA  
 RCE 65468

DATE: \_\_\_\_\_



I HEREBY STATE THAT THE MAP OF THIS SUBDIVISION WAS EXAMINED BY ME OR UNDER MY DIRECTION AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

NAME: \_\_\_\_\_  
 ANTHONY G. CINQUINI  
 STATE OF CALIFORNIA  
 PLS 8614

DATE: \_\_\_\_\_



## COUNTY TAX COLLECTOR AND REDEMPTION OFFICER'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF MY OFFICE, THERE ARE NO LIENS FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES (EXCEPT TAXES OR SPECIAL ASSESSMENTS NOT YET PAYABLE) AGAINST ANY PART OF THE LAND INCLUDED IN THE WITHIN SUBDIVISION, AND THAT SECURITY IN THE AMOUNT OF \$ \_\_\_\_\_ HAS BEEN FILED WITH THE COUNTY TAX COLLECTOR AND REDEMPTION OFFICER TO GUARANTEE THE PAYMENT OF ALL TAXES AND ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOW A LIEN AGAINST THE PROPERTY IN THE WITHIN SUBDIVISION, BUT WHICH ARE NOT YET PAYABLE.

\_\_\_\_\_  
 ROBERT G. MINAHEN  
 COUNTY TAX COLLECTOR AND  
 REDEMPTION OFFICER  
 COUNTY OF NAPA, STATE OF CALIFORNIA

DATE: \_\_\_\_\_

\_\_\_\_\_  
 DEPUTY

DATE: \_\_\_\_\_

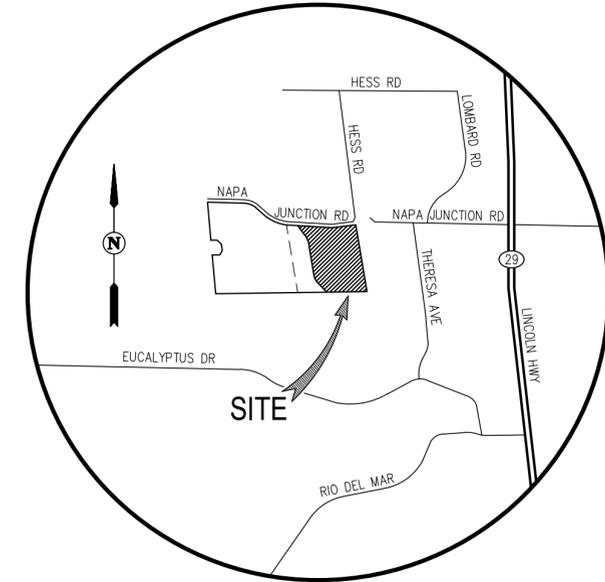
## CITY CLERK'S CERTIFICATE

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON AT A REGULAR MEETING HELD ON THE \_\_\_ DAY OF \_\_\_\_\_ 20\_\_ HAS APPROVED THIS MAP ENTITLED "FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES" AND HAS ACCEPTED ON BEHALF OF THE CITY OF AMERICAN CANYON PUBLIC, THE FOLLOWING DEDICATIONS SHOWN HEREON IN THE BODY OF SAID MAP:

1. PARCEL X
2. "PUBLIC UTILITY EASEMENT" OR "PUE" FOR THE PURPOSE OF PUBLIC UTILITIES ON, ACROSS, AND OVER THOSE DESIGNATED AREAS.
3. "EMERGENCY VEHICLE ACCESS EASEMENT" OR "EVAE" FOR THE PURPOSE OF INGRESS AND EGRESS OF EMERGENCY VEHICLES.

\_\_\_\_\_  
 TARESA GEILFUSS  
 CITY CLERK, CITY OF AMERICAN CANYON  
 STATE OF CALIFORNIA

DATE: \_\_\_\_\_



VICINITY MAP  
 NOT TO SCALE

## SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CG AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; TC AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; JSP AMERICAN CANYON, LLC, A DELAWARE LIMITED LIABILITY COMPANY; IN SEPTEMBER OF 2022. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS WITHIN TWO YEARS OF THE FILING OF THIS MAP, AND THAT THE MONUMENTS ARE, OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.

\_\_\_\_\_  
 DATE



\_\_\_\_\_  
 MARK H. WEHBER, P.L.S.  
 L.S. NO. 7960

## FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES

CONSISTING OF 5 SHEETS  
 BEING A SUBDIVISION OF PARCEL TWO AS DESCRIBED IN THAT CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-001759,  
 NAPA COUNTY RECORDS.

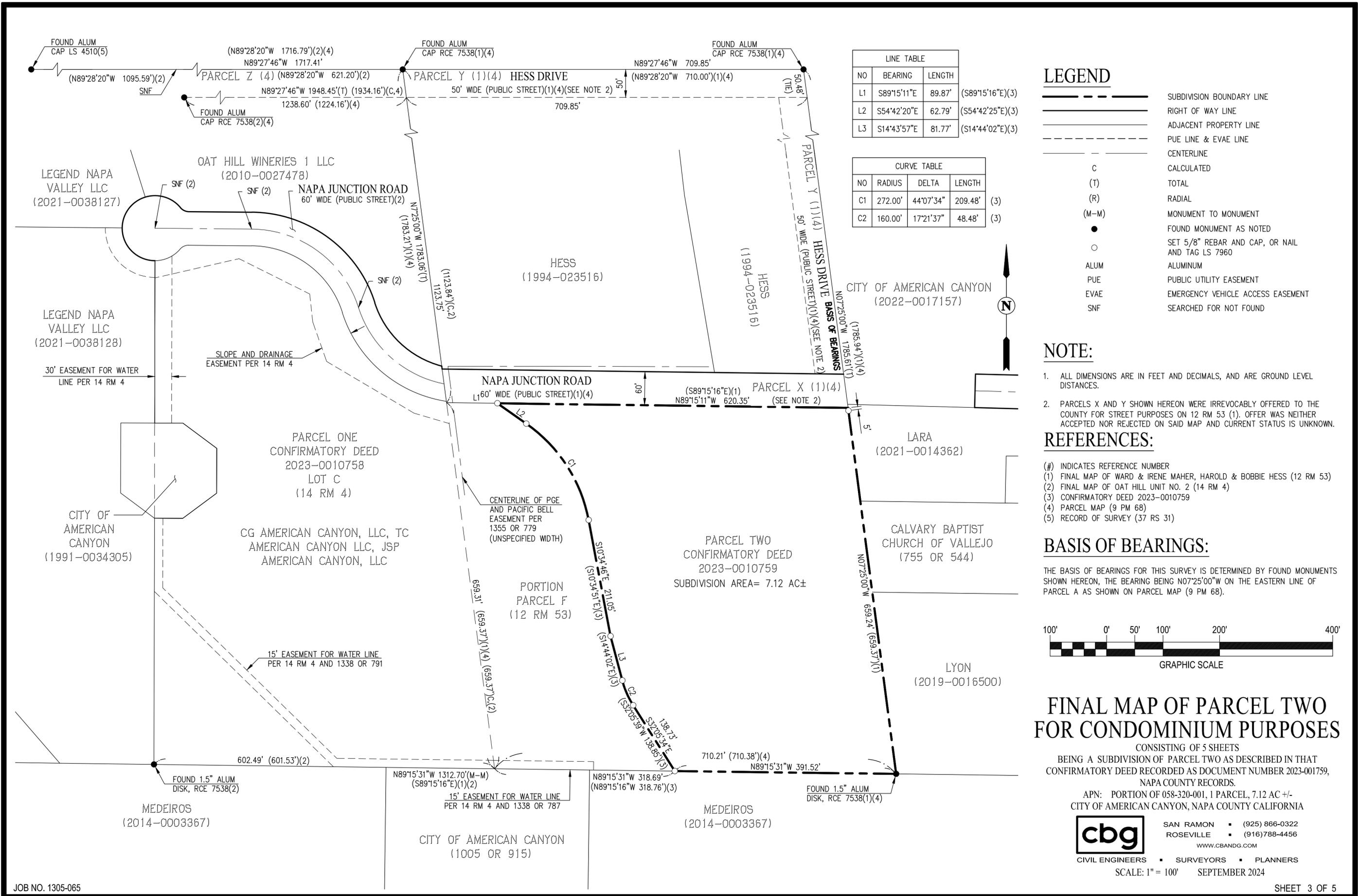
APN: PORTION OF 058-320-001, 1 PARCEL, 7.12 AC +/-  
 CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



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 ROSEVILLE ■ (916) 788-4456  
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CIVIL ENGINEERS ■ SURVEYORS ■ PLANNERS

SEPTEMBER 2024



LINE TABLE			
NO	BEARING	LENGTH	
L1	S89°15'11"E	89.87'	(S89°15'16"E)(3)
L2	S54°42'20"E	62.79'	(S54°42'25"E)(3)
L3	S14°43'57"E	81.77'	(S14°44'02"E)(3)

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	272.00'	44°07'34"	209.48' (3)
C2	160.00'	17°21'37"	48.48' (3)

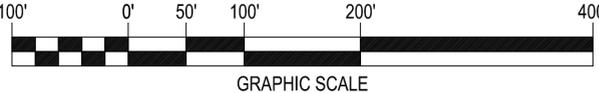
- ### LEGEND
- SUBDIVISION BOUNDARY LINE
  - RIGHT OF WAY LINE
  - ADJACENT PROPERTY LINE
  - PUE LINE & EVAE LINE
  - CENTERLINE
  - CALCULATED
  - TOTAL
  - RADIAL
  - MONUMENT TO MONUMENT
  - FOUND MONUMENT AS NOTED
  - SET 5/8" REBAR AND CAP, OR NAIL AND TAG LS 7960
  - ALUMINUM
  - PUBLIC UTILITY EASEMENT
  - EMERGENCY VEHICLE ACCESS EASEMENT
  - SEARCHED FOR NOT FOUND

- ### NOTE:
- ALL DIMENSIONS ARE IN FEET AND DECIMALS, AND ARE GROUND LEVEL DISTANCES.
  - PARCELS X AND Y SHOWN HEREON WERE IRREVOCABLY OFFERED TO THE COUNTY FOR STREET PURPOSES ON 12 RM 53 (1). OFFER WAS NEITHER ACCEPTED NOR REJECTED ON SAID MAP AND CURRENT STATUS IS UNKNOWN.

- ### REFERENCES:
- (#) INDICATES REFERENCE NUMBER
  - (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
  - (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
  - (3) CONFIRMATORY DEED 2023-0010759
  - (4) PARCEL MAP (9 PM 68)
  - (5) RECORD OF SURVEY (37 RS 31)

### BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



## FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES

CONSISTING OF 5 SHEETS  
 BEING A SUBDIVISION OF PARCEL TWO AS DESCRIBED IN THAT CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-001759, NAPA COUNTY RECORDS.

APN: PORTION OF 058-320-001, 1 PARCEL, 7.12 AC +/- CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA



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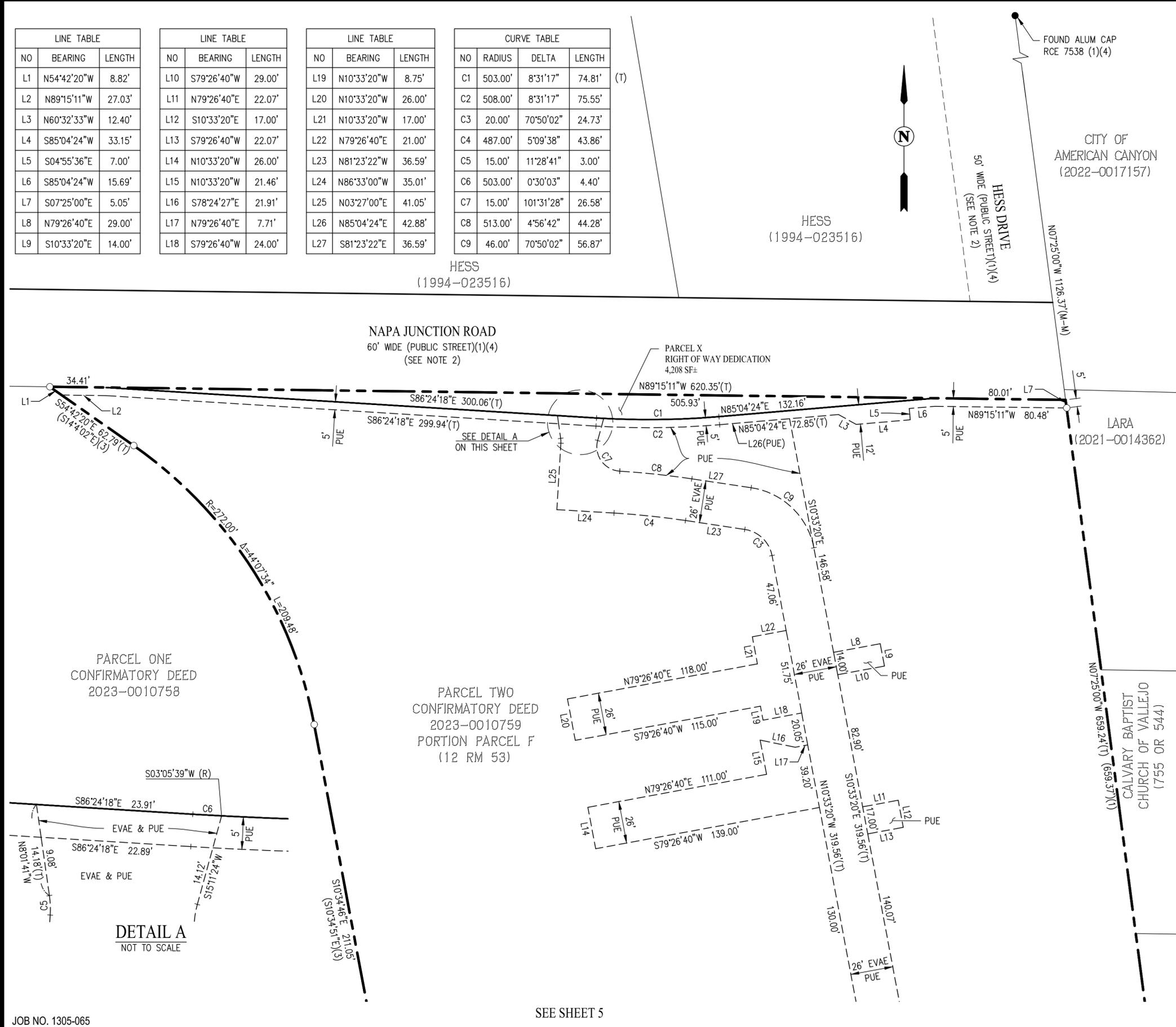
CIVIL ENGINEERS SURVEYORS PLANNERS  
 SCALE: 1" = 100' SEPTEMBER 2024

LINE TABLE		
NO	BEARING	LENGTH
L1	N54°42'20"W	8.82'
L2	N89°15'11"W	27.03'
L3	N60°32'33"W	12.40'
L4	S85°04'24"W	33.15'
L5	S04°55'36"E	7.00'
L6	S85°04'24"W	15.69'
L7	S07°25'00"E	5.05'
L8	N79°26'40"E	29.00'
L9	S10°33'20"E	14.00'

LINE TABLE		
NO	BEARING	LENGTH
L10	S79°26'40"W	29.00'
L11	N79°26'40"E	22.07'
L12	S10°33'20"E	17.00'
L13	S79°26'40"W	22.07'
L14	N10°33'20"W	26.00'
L15	N10°33'20"W	21.46'
L16	S78°24'27"E	21.91'
L17	N79°26'40"E	7.71'
L18	S79°26'40"W	24.00'

LINE TABLE		
NO	BEARING	LENGTH
L19	N10°33'20"W	8.75'
L20	N10°33'20"W	26.00'
L21	N10°33'20"W	17.00'
L22	N79°26'40"E	21.00'
L23	N81°23'22"W	36.59'
L24	N86°33'00"W	35.01'
L25	N03°27'00"E	41.05'
L26	N85°04'24"E	42.88'
L27	S81°23'22"E	36.59'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	503.00'	8°31'17"	74.81'
C2	508.00'	8°31'17"	75.55'
C3	20.00'	70°50'02"	24.73'
C4	487.00'	5°09'38"	43.86'
C5	15.00'	11°28'41"	3.00'
C6	503.00'	0°30'03"	4.40'
C7	15.00'	101°31'28"	26.58'
C8	513.00'	4°56'42"	44.28'
C9	46.00'	70°50'02"	56.87'



**LEGEND**

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	ADJACENT PROPERTY LINE
	PUE LINE & EVAE LINE
	CENTERLINE
C	CALCULATED
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
●	FOUND MONUMENT AS NOTED
○	SET 5/8" REBAR AND CAP, OR NAIL AND TAG LS 7960
ALUM	ALUMINUM
PUE	PUBLIC UTILITY EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SNF	SEARCHED FOR NOT FOUND

**NOTE:**

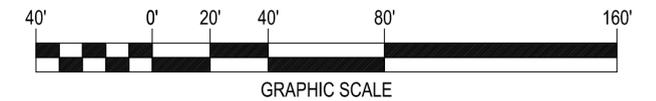
- ALL DIMENSIONS ARE IN FEET AND DECIMALS, AND ARE GROUND LEVEL DISTANCES.
- PARCELS X AND Y SHOWN HEREON WERE IRREVOCABLY OFFERED TO THE COUNTY FOR STREET PURPOSES ON 12 RM 53 (1). OFFER WAS NEITHER ACCEPTED NOR REJECTED ON SAID MAP AND CURRENT STATUS IS UNKNOWN.

**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
- (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
- (3) CONFIRMATORY DEED 2023-0010759
- (4) PARCEL MAP (9 PM 68)
- (5) RECORD OF SURVEY (37 RS 31)

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



**FINAL MAP OF PARCEL TWO FOR CONDOMINIUM PURPOSES**

CONSISTING OF 5 SHEETS  
 BEING A SUBDIVISION OF PARCEL TWO AS DESCRIBED IN THAT CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-001759, NAPA COUNTY RECORDS.  
 APN: PORTION OF 058-320-001, 1 PARCEL, 7.12 AC +/- CITY OF AMERICAN CANYON, NAPA COUNTY CALIFORNIA

**cbg** CIVIL ENGINEERS SURVEYORS PLANNERS  
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 SCALE: 1" = 40' SEPTEMBER 2024

SEE SHEET 4

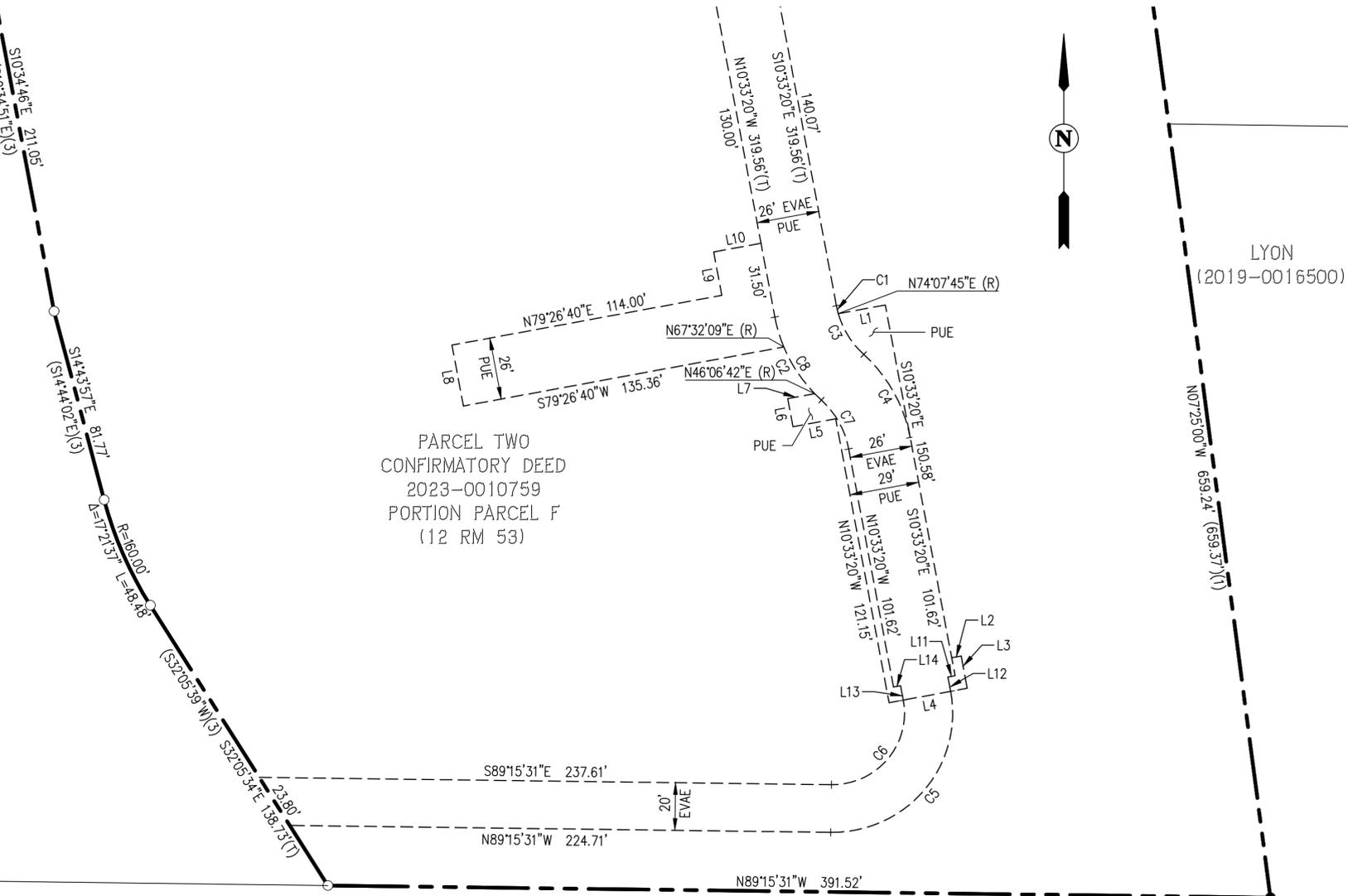
PARCEL ONE  
CONFIRMATORY DEED  
2023-0010758

PARCEL TWO  
CONFIRMATORY DEED  
2023-0010759  
PORTION PARCEL F  
(12 RM 53)

LYON  
(2019-0016500)

MEDEIROS  
(2014-0003367)

CITY OF AMERICAN CANYON  
(1005 OR 915)



**LEGEND**

	SUBDIVISION BOUNDARY LINE
	RIGHT OF WAY LINE
	ADJACENT PROPERTY LINE
	PUE LINE & EVAE LINE
	CENTERLINE
C	CALCULATED
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
●	FOUND MONUMENT AS NOTED
○	SET 5/8" REBAR AND CAP, OR NAIL AND TAG LS 7960
ALUM	ALUMINUM
PUE	PUBLIC UTILITY EASEMENT
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SNF	SEARCHED FOR NOT FOUND

**NOTE:**

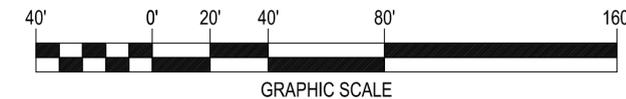
1. ALL DIMENSIONS ARE IN FEET AND DECIMALS, AND ARE GROUND LEVEL DISTANCES.
2. PARCELS X AND Y SHOWN HEREON WERE IRREVOCABLY OFFERED TO THE COUNTY FOR STREET PURPOSES ON 12 RM 53 (1). OFFER WAS NEITHER ACCEPTED NOR REJECTED ON SAID MAP AND CURRENT STATUS IS UNKNOWN.

**REFERENCES:**

- (#) INDICATES REFERENCE NUMBER
- (1) FINAL MAP OF WARD & IRENE MAHER, HAROLD & BOBBIE HESS (12 RM 53)
- (2) FINAL MAP OF OAT HILL UNIT NO. 2 (14 RM 4)
- (3) CONFIRMATORY DEED 2023-0010759
- (4) PARCEL MAP (9 PM 68)
- (5) RECORD OF SURVEY (37 RS 31)

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THIS SURVEY IS DETERMINED BY FOUND MONUMENTS SHOWN HEREON, THE BEARING BEING N07°25'00"W ON THE EASTERN LINE OF PARCEL A AS SHOWN ON PARCEL MAP (9 PM 68).



LINE TABLE		
NO	BEARING	LENGTH
L1	N79°26'40"E	19.84'
L2	N79°26'40"E	4.00'
L3	S10°33'20"E	13.76'
L4	S79°26'40"W	33.00'
L5	S79°26'40"W	18.00'
L6	N10°33'20"W	12.00'
L7	N79°26'40"E	11.36'

LINE TABLE		
NO	BEARING	LENGTH
L8	N10°33'20"W	26.00'
L9	N10°33'20"W	18.50'
L10	N79°26'40"E	20.00'
L11	S79°26'40"W	3.00'
L12	S10°33'20"E	6.15'
L13	N10°33'20"W	6.15'
L14	S79°26'40"W	3.00'

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	37.00'	5°18'55"	3.43'
C2	63.00'	21°25'28"	23.56'
C3	37.00'	36°52'12"	23.81' (T)
C4	63.00'	36°52'12"	40.54'
C5	50.00'	101°17'49"	88.40'
C6	30.00'	101°17'49"	53.04'
C7	37.00'	36°52'12"	23.81'
C8	63.00'	36°52'12"	40.54' (T)

**FINAL MAP OF PARCEL TWO  
FOR CONDOMINIUM PURPOSES**

CONSISTING OF 5 SHEETS  
BEING A SUBDIVISION OF PARCEL TWO AS DESCRIBED IN THAT  
CONFIRMATORY DEED RECORDED AS DOCUMENT NUMBER 2023-001759,  
NAPA COUNTY RECORDS.  
APN: PORTION OF 058-320-001, 1 PARCEL, 7.12 AC +/-  
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ROSEVILLE (916) 788-4456  
WWW.CBANDG.COM

CIVIL ENGINEERS SURVEYORS PLANNERS  
SCALE: 1" = 40' SEPTEMBER 2024



## **TITLE**

Adoption of Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection

## **RECOMMENDATION**

Adopt Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection

## **CONTACT**

Erica Ahmann Smithies, PE, Public Works Director

## **BACKGROUND & ANALYSIS**

The City's Public Works Department is responsible for constructing transportation projects that are state and federally funded. Occasionally, due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms.

The Federal regulations set forth standards for procuring and administering A&E contracts. The provisions of the Brooks Act (40 United States Code, Section 1104) requires local agencies to award federally funded engineering and design-related contracts, otherwise known as A&E contracts, on the basis of fair and open competitive negotiations, demonstrated competence, and professional qualifications.

Title 23 Code of Federal Regulations Part 172 (23 CFR 172) allows Caltrans Division of Local Assistance (DLA) to prescribe the policies and procedures for engineering and design related services, also known as Architectural and Engineering (A&E). Local Public Agencies (LPAs) are responsible for adopting the written policies and procedures prescribed by the awarding State Transportation Agency (STA).

Past process review findings by DLA showed a significant lack of, or incomplete A&E procurement policies and procedures as one of the most common findings. A non-compliance of this matter can result in a loss of funds and jeopardizing future opportunities to receive federal and state funds.

The State of California Department of Transportation (Caltrans) has developed the Local Assistance Procedures Manual (LAPM) Chapter 10, Consultant Selection which sets forth the forth policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and federal funded transportation projects to ensure compliance with applicable Federal

and State laws and regulations and to maintain eligibility for federal-aid reimbursement. LPAs accept this responsibility when receiving federal funds from DLA, and by signing the Master Agreement for Federal-Aid Projects. DLA requires that local agencies adopt LAPM Chapter 10.

Staff recommends the City Council adopt Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection to demonstrate compliance and maintain eligibility to receive federal and state funds for future City projects.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Not applicable.

## **FISCAL IMPACT**

Failure to adopt Caltrans Local Assistance Procedures Manual Chapter 10: Consultant Selection can significantly impact the City's access to federal- and state-aid funds for A&E expenditures, which would otherwise offset the need to use local funds. Hence, it is in the City's financial interest to pursue and utilize such funds in its delivery of projects, when possible.

## **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 - Adoption of Caltrans LAPM Chapter 10](#)

**RESOLUTION NO. 2024-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON ADOPTING CALTRANS LOCAL ASSISTANCE PROCEDURES MANUAL CHAPTER 10: CONSULTANT SELECTION**

**WHEREAS**, the City's Public Works Department is responsible for constructing transportation projects that are state and federally funded. Occasionally, due to limited staffing and expertise, certain services including Architectural and Engineering (A&E) are contracted out to qualified firms; and

**WHEREAS**, Title 23 Code of Federal Regulations Part 172 (23 CFR 172) allows Caltrans Division of Local Assistance (DLA) to prescribe the policies and procedures for engineering and design related services; and

**WHEREAS**, Local Public Agencies (LPAs) are responsible for adopting the written policies and procedures prescribed by the awarding State Transportation Agency (STA); and

**WHEREAS**, Caltrans has developed the Local Assistance Procedures Manual (LAPM) Chapter 10: Consultant Selection which sets forth the policies and procedures to be utilized by local agencies in the procurement and management of A&E contracts on state and federal funded transportation projects to ensure compliance with applicable Federal and State laws and regulations and to maintain eligibility for federal-aid reimbursement; and

**WHEREAS**, the City desires to adopt Caltrans' LAPM Chapter 10 to demonstrate compliance and maintain eligibility to receive federal and state funds for future City projects.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of American Canyon hereby adopts the Local Assistance Procedures Manual Chapter 10: Consultant Selection dated January 2024 or as amended in future updates.

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 15<sup>th</sup> day of October, 2024, by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVE AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney



## **TITLE**

Renegotiated Administrative Service Agreement with MissionSquare Retirement

## **RECOMMENDATION**

Adopt a Resolution approving a renegotiated Administrative Service Agreement with MissionSquare Retirement.

## **CONTACT**

Maria Ojeda, Assistant City Manager  
Juan Gomez, Finance Director

## **BACKGROUND & ANALYSIS**

The City of American Canyon sponsors a Governmental 457(b) Deferred Compensation Plan under Section 457(b) of the Internal Revenue Code (IRC); and a 401(a) Money Purchase Plan under Section 401(a) of the IRC. Two options are available to full time employees, Core Bridge and MissionSquare.

Staff conducted an evaluation of the administrative fees of the MissionSquare Plan (Plan) in comparison to other jurisdictions and worked with MissionSquare directly to renegotiate an agreement with lower fees that will benefit Plan participants. The renegotiated fees will result in an estimated 1.25% combined savings to employees at the plan and fund level. The renegotiated agreement provides for a 7-year term and access to in person appointments provided by Certified Financial Planners.

Staff also continues to work with Core Bridge to renegotiate plan administrative fees. A similar report will be presented for consideration once those negotiations are complete.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Organizational Effectiveness: "Deliver exemplary government services."

## **FISCAL IMPACT**

None.

## **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 - Mission Square](#)
2. [Mission Square Agreement](#)

RESOLUTION NO. 2024-\_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON  
APPROVING A RENEGOTIATED ADMINISTRATIVE SERVICE AGREEMENT  
WITH MISSIONSQUARE RETIREMENT**

**WHEREAS**, the City of American Canyon sponsors Governmental 457(b) Deferred Compensation Plan (Plan) under Section 457(b) of the Internal Revenue Code (IRC); and 401(a) Money Purchase Plan (Plan) under Section 401(a) of the IRC; and

**WHEREAS**, under the California State Constitution, Article XVI Section 17, government entities that sponsor a 457(b) and /or 401(a) plans, have fiduciary responsibilities as Plan Sponsors to ensure the operation and investment of their respective public retirement plans are for the exclusive purpose of providing benefits to participants and beneficiaries; and

**WHEREAS**, a comparison of administrative fees including base fee and services fees was completed by staff; and

**WHEREAS**, after evaluations were completed, staff is recommending the City Council approve a renegotiated agreement with the MissionSquare. Under the renegotiated Administrative Services Agreement, plan participants will receive lower plan fees and enhanced services from certified financial planners; and

**WHEREAS**, City Council delegates the administration and fiduciary oversight duties, authority and responsibilities of the 457(b) and 401(a) plan to the Finance Director.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of American Canyon authorizes the City Manager to sign the Administrative Services Agreement for 457(b) and 401(a) with MissionSquare. The assets of the Plan shall be held in trust, with the City serving as trustee, for the exclusive benefit of the Plan participants and their beneficiaries, and the assets shall not be diverted to any other purpose. The Trustee's beneficial ownership of Plan assets held in MissionSquare's Retirement Trust shall be held for the further exclusive benefit of the Plan participants and their beneficiaries. The City will serve as the trustee under the plan.

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 15th day of October 2024, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney

**ADMINISTRATIVE SERVICES AGREEMENT**

for

**City of American Canyon**

Type: **457**

Account #: **303799**

Type: **401**

Account #: **107400**

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DRAFT - DO NOT SIGN



## ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement ("Agreement"), made as of this day, (please enter date) \_\_\_\_\_, (herein referred to as the "Inception Date"), between the International City Management Association Retirement Corporation doing business as MissionSquare Retirement ("MissionSquare"), a nonprofit corporation organized and existing under the laws of the State of Delaware, and the **City of American Canyon** ("Employer"), an **Entity** organized and existing under the laws of the State of **California** with an office at **4381 Broadway Street, Suite 201, American Canyon, California 94503**.

### RECITALS

Employer acts as public plan sponsor of a retirement plan ("Plan"), and in that capacity, has responsibility to obtain administrative services and investment alternatives for the Plan;

VantageTrust is a group trust established and maintained in accordance with New Hampshire Revised Statutes Annotated section 391:1 and Internal Revenue Service Revenue Ruling 81-100, 1981-1 C.B. 326, which provides for the commingled investment of retirement funds;

MissionSquare, or its wholly owned subsidiary, acts as investment adviser to VantageTrust Company, LLC, the Trustee of VantageTrust;

MissionSquare has designed, and VantageTrust Company offers, a series of separate funds (the "Funds") for the investment of plan assets as referenced in the Funds' principal disclosure documents, the Disclosure Memorandum and the Fact Sheets (together, "MissionSquare Disclosures"); and

MissionSquare provides a range of services to public employers for the operation of employee retirement plans including, but not limited to, communications concerning investment alternatives, account maintenance, account recordkeeping, investment and tax reporting, transaction processing, and benefit disbursement.

## **AGREEMENTS**

### 1. Appointment of MissionSquare

Employer hereby appoints MissionSquare as administrator of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan. The functions to be performed by MissionSquare shall be those set forth in Exhibit A to this Agreement.

### 2. Adoption of VantageTrust

Employer has adopted the Declaration of Trust of VantageTrust Company and agrees to the commingled investment of assets of the Plan within VantageTrust. Employer agrees that the investment, management, and distribution of amounts deposited in VantageTrust shall be subject to the Declaration of Trust, as it may be amended from time to time and shall also be subject to terms and conditions set forth in disclosure documents (such as the MissionSquare Disclosures or Employer Bulletins) as those terms and conditions may be adjusted from time to time.

### 3. Employer Duty to Furnish Information

Employer agrees to furnish to MissionSquare on a timely basis such information as is necessary for MissionSquare to carry out its responsibilities as Administrator of the Plan, including information needed to allocate individual participant accounts to Funds in the Plan, and information as to the employment status of participants, and participant ages, addresses, and other identifying information (including tax identification numbers). Employer also agrees that it will notify MissionSquare in a timely manner regarding changes in staff as it relates to various roles. Such notification is to be completed through the plan sponsor website. MissionSquare shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the Employer or any information relating to an individual participant or beneficiary that is furnished by such participant or beneficiary, and MissionSquare shall not be responsible for any error arising from its reliance on such information. MissionSquare will provide reports and account information to the Employer through the plan sponsor website.

Employer is required to send in contributions through the plan sponsor website. Alternative electronic methods may be allowed but must be approved by MissionSquare for use. Contributions may not be sent through paper submittal documents.

To the extent Employer selects third-party investment options that do not have profile information provided to MissionSquare through MissionSquare's

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electronic data feeds from external sources (such as Morningstar) or the third-party investment option providers, the Employer is responsible for providing to MissionSquare timely investment option updates for disclosure to Plan participants. Such updates may be provided to MissionSquare through the Employer's investment consultant or other designated representative.

#### 4. MissionSquare Representations and Warranties

MissionSquare represents and warrants to Employer that:

- (a) MissionSquare is a non-profit corporation with full power and authority to enter into this Agreement and to perform its obligations under this Agreement. The ability of MissionSquare, or its wholly owned subsidiary, to serve as investment adviser to VantageTrust Company is dependent upon the continued willingness of VantageTrust Company for MissionSquare, or its wholly owned subsidiary, to serve in that capacity.
- (b) MissionSquare is an investment adviser registered as such with the U.S. Securities and Exchange Commission under the Investment Advisers Act of 1940, as amended.
- (c)(i) MissionSquare shall maintain and administer the 457(b) Plan in accordance with the requirements for eligible deferred compensation plans under Section 457 of the Internal Revenue Code and other applicable federal law; provided, however, that MissionSquare shall not be responsible for the eligible status of the 457(b) Plan in the event that the Employer directs MissionSquare to administer the 457(b) Plan or disburse assets in a manner inconsistent with the requirements of Section 457 or otherwise causes the 457(b) Plan not to be carried out in accordance with its terms. Further, in the event that the Employer uses its own customized plan document, MissionSquare shall not be responsible for the eligible status of the 457(b) Plan to the extent affected by terms in the Employer's plan document that differ from those in MissionSquare's model plan document. MissionSquare shall not be responsible for monitoring state or local law applicable to retirement plans or for administering the 457(b) Plan in compliance with local or state requirements regarding plan administration unless Employer notifies MissionSquare of any such local or state requirements.
- (c)(ii) MissionSquare shall maintain and administer the 401(a) Plan in accordance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue

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Code and other applicable federal law; provided, however, MissionSquare shall not be responsible for the qualified status of the 401(a) Plan in the event that the Employer directs MissionSquare to administer the 401(a) Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the 401(a) Plan not to be carried out in accordance with its terms; provided, further, that if the plan document used by the Employer contains terms that differ from the terms of MissionSquare's model plan document, MissionSquare shall not be responsible for the qualified status of the 401(a) Plan to the extent affected by the differing terms in the Employer's plan document. MissionSquare shall not be responsible for monitoring state or local law applicable to retirement plans or for administering the 401(a) Plan in compliance with local or state requirements regarding plan administration unless Employer notifies MissionSquare of any such local or state requirements.

5. Employer Representations and Warranties

Employer represents and warrants to MissionSquare that:

- (a) Employer is organized in the form and manner recited in the opening paragraph of this Agreement with full power and authority to enter into and perform its obligations under this Agreement and to act for the Plan and participants in the manner contemplated in this Agreement. Execution, delivery, and performance of this Agreement will not conflict with any law, rule, regulation or contract by which the Employer is bound or to which it is a party.
- (b) Employer understands and agrees that MissionSquare's sole function under this Agreement is to act as recordkeeper and to provide administrative, investment or other services at the direction of Plan participants, the Employer, its agents or designees in accordance with the terms of this Agreement. Under the terms of this Agreement, MissionSquare does not render investment advice, is neither the "Plan Administrator" nor "Plan Sponsor" as those terms are defined under applicable federal, state, or local law, and does not provide legal, tax or accounting advice with respect to the creation, adoption or operation of the Plan and its related trust. MissionSquare does not perform any service under this Agreement that might cause MissionSquare to be treated as a "fiduciary" of the Plan under applicable law, except, and only, to the extent that MissionSquare provides investment

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advisory services to individual participants enrolled in Guided Pathways Advisory Services.

- (c) Employer acknowledges and agrees that MissionSquare does not assume any responsibility with respect to the selection or retention of the Plan's investment options. Employer shall have exclusive responsibility for the Plan's investment options, including the selection of the applicable share class.
- (d) Employer acknowledges that certain such services to be performed by MissionSquare under this Agreement may be performed by an affiliate or agent of MissionSquare pursuant to one or more other contractual arrangements or relationships, and that MissionSquare reserves the right to change vendors with which it has contracted to provide services in connection with this Agreement without prior notice to Employer.
- (e) Employer approves the use of its Plan in MissionSquare external media, publications and materials. Examples include press releases announcements and inclusion of the general plan information in request for proposal responses.

#### 6. Participation in Certain Proceedings

The Employer hereby authorizes MissionSquare to act as agent, to appear on its behalf, and to join the Employer as a necessary party in all legal proceedings involving the garnishment of benefits or the transfer of benefits pursuant to the divorce or separation of participants in the Plan. Unless Employer notifies MissionSquare otherwise, Employer consents to the disbursement by MissionSquare of benefits that have been garnished or transferred to a former spouse, current spouse, or child pursuant to a domestic relations order or child support order.

#### 7. Compensation and Payment

- (a) MissionSquare's compensation under this Agreement shall be as set forth in subsection (b) below.
- (b) **Compensation for Management Services to VantageTrust Company, Compensation for Advisory and other Services to the MissionSquare Funds Class M and Payments from Third-Party Investment Options.** Employer acknowledges that MissionSquare, or its wholly owned subsidiary, receives fees from VantageTrust Company for investment advisory services and plan and participant services furnished to VantageTrust Company.

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Employer further acknowledges that MissionSquare, including certain of its wholly owned subsidiaries, receives compensation for advisory and other services furnished to the MissionSquare Funds Class M, which serve as the underlying portfolios of a number of Funds offered through VantageTrust. For a MissionSquare Fund Class R that invests substantially all of its assets in a third-party mutual fund not affiliated with MissionSquare, MissionSquare or its wholly owned subsidiary receives payments from the third-party mutual fund families or their service providers in the form of 12b-1 fees, service fees, compensation for sub-accounting and other services provided based on assets in the underlying third-party mutual fund. These fees are described in the MissionSquare Disclosures and MissionSquare's fee disclosure statement. In addition, to the extent that third party options are included in the investment line-up for the Plan, MissionSquare receives administrative fees from its third-party settlement and clearing agent for providing administrative and other services based on assets invested in third-party investment options; such administrative fees come from payments made by third-party investment options to the settlement and clearing agent.

- (c) **Redemption Fees.** Redemption fees imposed by outside investment options in which Plan assets are invested are collected and paid to the investment option by MissionSquare. MissionSquare remits 100% of redemption fees back to the specific investment option to which redemption fees apply. These redemption fees and the individual investment option's policy with respect to redemption fees are specified in the prospectus for the individual mutual fund and referenced in the MissionSquare Disclosures.
- (d) **Payment Procedures.** All payments to MissionSquare pursuant to this Section 7 shall be made from Plan assets held by VantageTrust or received from third-party investment options or their service providers in connection with Plan assets invested in such third-party investment options, to the extent not paid by the Employer. The amount of Plan assets administered by MissionSquare shall be adjusted as required to reflect any such payments as are made from the Plan. In the event that the Employer agrees to pay amounts owed pursuant to this Section 7 directly, any amounts unpaid and outstanding after 30 days of invoice to the Employer shall be withdrawn from Plan assets.

The compensation and payment set forth in this Section 7 are contingent upon the Employer's using MissionSquare's plan sponsor website for contribution

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processing and submitting contribution funds by ACH or wire transfer on a consistent basis over the term of this Agreement. The compensation in this Section 7 is also based on the assets of the Plan being invested in **R5** shares of MissionSquare PLUS Fund and the Employer offering the MissionSquare PLUS Fund as the sole stable value option.

The compensation and payment in this Section 7 will take effect in the calendar quarter following receipt at a Delivery Address (defined below the signature line) of one fully executed copy of this Administrative Services Agreement based upon the following schedule:

- Agreement received by February 20 - Effective April
- Agreement received by May 20 - Effective July
- Agreement received by August 20 - Effective October
- Agreement received by November 20 - Effective January

Employer further acknowledges and agrees that compensation and payment under this Agreement shall be subject to re-negotiation in the event that the Employer (a) chooses to implement additional mutual funds that neither (i) trade via NSCC nor (ii) meet MissionSquare's daily trading operational guidelines or (b) chooses to implement investment options that are not mutual funds.

#### 8. Indemnification

MissionSquare shall not be responsible for any acts or omissions of any person with respect to the Plan or its related trust, other than MissionSquare in connection with the administration or operation of the Plan. Employer shall indemnify MissionSquare against, and hold MissionSquare harmless from, any and all loss, damage, penalty, liability, cost, and expense, including without limitation, reasonable attorney's fees, that may be incurred by, imposed upon, or asserted against MissionSquare by reason of any claim, regulatory proceeding, or litigation arising from any act done or omitted to be done by any individual or person with respect to the Plan or its related trust, excepting only any and all loss, damage, penalty, liability, cost or expense resulting from MissionSquare's negligence, bad faith, or willful misconduct.

#### 9. Term

This Agreement shall be in effect and commence on the date all parties have signed and executed this Agreement ("Inception Date"). The term of this Agreement will commence on the Inception Date and extend **seven (7) years** from that date. This Agreement will be renewed automatically for each succeeding year unless written notice of termination is provided by either party to the other no less than 60 days before the end of such Agreement year. The Employer understands and acknowledges that, in the event the Employer

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terminates this Agreement (or replaces the MissionSquare PLUS Fund of VantageTrust as an investment option in its investment line-up), MissionSquare retains full discretion to release Plan assets invested in the MissionSquare PLUS Fund in an orderly manner over a period of up to 12 months from the date MissionSquare receives written notification from the Employer that it has made a final and binding selection of a replacement for MissionSquare as administrator of the Plan (or a replacement investment option for the MissionSquare PLUS Fund).

10. Amendments and Adjustments

- (a) This Agreement may be amended by written instrument signed by the parties.
- (b) MissionSquare may modify this Agreement by providing 60 days' advance written notice to the Employer prior to the effective date of such proposed modification. Such modification shall become effective unless, within the 60-day notice period, the Employer notifies MissionSquare in writing that it objects to such modification.
- (c) The parties agree that enhancements may be made to administrative services under this Agreement. The Employer will be notified of enhancements or reduction in fees through electronic messages or special mailings.

11. Notices

Unless otherwise provided in this Agreement, all notices required to be delivered under this Agreement shall be in writing and shall be delivered, mailed, e-mailed or faxed to the location of the relevant party set forth below or to such other address or to the attention of such other persons as such party may hereafter specify by notice to the other party.

**MissionSquare:** Legal Department, MissionSquare, 777 North Capitol Street, N.E., Suite 600, Washington, D.C., 20002-4240

**Facsimile:** (202) 962-4601

**Employer:** at the office set forth in the first paragraph hereof, or to any other address, facsimile number or e-mail address designated by the Employer to receive the same by written notice similarly given.

Each such notice, request or other communication shall be effective: (i) if given by facsimile, when transmitted to the applicable facsimile number and there is appropriate confirmation of receipt; (ii) if given by mail or e-mail, upon

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transmission to the designated address with no indication that such address is invalid or incorrect; or (iii) if given by any other means, when actually delivered at the aforesaid address.

12. Complete Agreement

This Agreement shall constitute the complete and full understanding and sole agreement between MissionSquare and Employer relating to the object of this Agreement and correctly sets forth the complete rights, duties and obligations of each party to the other as of its date. This Agreement supersedes all written and oral agreements, communications or negotiations among the parties. Any prior agreements, promises, negotiations or representations, verbal or otherwise, not expressly set forth in this Agreement are of no force and effect.

13. Titles

The headings of Sections of this Agreement and the headings for each of the attached Exhibits are for convenience only and do not define or limit the contents thereof.

14. Incorporation of Exhibits

All Exhibits (and any subsequent amendments thereto), attached hereto, and referenced herein, are hereby incorporated within this Agreement as if set forth fully herein.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of **California**, applicable to contracts made in that jurisdiction without reference to its conflicts of laws provisions.

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In Witness Whereof, the parties hereto certify that they have read and understand this Agreement and all Exhibits attached hereto and have caused this Agreement to be executed by their duly authorized officers as of the Inception Date first above written.

**APPROVED AS TO FORM**

**CITY OF AMERICAN CANYON**

Deleted: ¶

By William D. Ross, City Attorney

By \_\_\_\_\_  
Signature/Date

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By \_\_\_\_\_  
Name and Title (Please Print)

**THE INTERNATIONAL CITY MANAGEMENT  
ASSOCIATION RETIREMENT CORPORATION  
doing business as MISSIONSQUARE  
RETIREMENT**

By \_\_\_\_\_  
Erica McFarquhar  
Assistant Secretary

[An execution copy will be provided via DocuSign]

## **Exhibit A**

### **Administrative Services**

The administrative services to be performed by MissionSquare under this Agreement shall be as follows:

- (a) Participant enrollment services are provided online. Employees will enroll online through a secure site or the Employer will enroll employees through the plan sponsor website.
- (b) Establishment of participant accounts for each employee participating in the Plan for whom MissionSquare receives appropriate enrollment instructions. MissionSquare is not responsible for determining if such Plan participants are eligible under the terms of the Plan.
- (c) Allocation in accordance with participant directions received in good order of individual participant accounts to investment options offered under the Plan.
- (d) Maintenance of individual accounts for participants reflecting amounts deferred, income, gain or loss credited, and amounts distributed as benefits.
- (e) Maintenance of records for all participants for whom participant accounts have been established. These files shall include enrollment instructions (provided to MissionSquare through the participant website or the plan sponsor website), beneficiary designation instructions and all other documents concerning each participant's account.
- (f) Provision of periodic reports to the Employer through the plan sponsor website. Participants will have access to account information through Participant Services, Voice Response System, the participant website, and text access, and through quarterly statements that can be delivered electronically through the participant website or by postal service.
- (g) Communication to participants of information regarding their rights and elections under the Plan.
- (h) Making available Participant Services Representatives through a toll-free telephone number from 8:30 a.m. to 9:00 p.m. Eastern Time, Monday through Friday (excluding holidays and days on which the securities markets or MissionSquare are closed for business (including emergency closings)), to assist participants.
- (i) Making available access to MissionSquare's website, to allow participants to access certain account information and initiate certain plan transactions at any time. The participant website is normally

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available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance.

- (j) Maintaining the security and confidentiality of client information through a system of controls including but not limited to, as appropriate: restricting plan and participant information only to those who need it to provide services, software and hardware security, access controls, data back-up and storage procedures, non-disclosure agreements, security incident response procedures, and audit reviews.
- (k) Making available access to MissionSquare's plan sponsor web site to allow plan sponsors to access certain plan information and initiate plan transactions such as enrolling participants and managing contributions at any time. The plan sponsor web site is normally available 24 hours a day, seven days a week except during scheduled maintenance periods designed to ensure high-quality performance.
- (l) Distribution of benefits as agent for the Employer in accordance with terms of the Plan. Participants who have separated from service can request distributions through the participant website or via form.
- (m) MissionSquare is authorized by the Employer to (a) determine whether a domestic relations order is an acceptable qualified domestic relations order under the terms of the Plan and (b) establish a separate account record for the alternate payee and provide for the investment and distribution of assets held thereunder.
- (n) Loans may be made available on the terms specified in the Loan Guidelines, if loans are adopted by the Employer. Participants can request loans through the participant website.
- (o) Guided Pathways Advisory Services - MissionSquare's participant advice service, "Fund Advice", may be made available through a third-party vendor on the terms specified on MissionSquare's website.
- (p) MissionSquare is authorized by the Employer to establish an unallocated plan level expense account to function as the Administrative Allowance account, to be invested as Employer directs.
- (q) MissionSquare will determine appropriate delivery method (electronic and/or print) for plan sponsor/participant communications and education based on a number of factors (audience, effectiveness, etc.)



## **TITLE**

Water Reclamation Facility Membrane Replacement

## **RECOMMENDATION**

Adopt a Resolution authorizing the City Manager to execute a purchase agreement with Veolia Water Technologies and Solutions for the procurement of eight hundred ninety-six (896) "ZW500D RX12 430 ft<sup>2</sup>" membrane modules, twelve (12) ZW500D LEAPmbr 16M cassette frames, and associated materials for existing cassette refurbishment and LEAPmbr upgrade, for use at the Water Reclamation Facility for a total cost of \$3,121,330 and amending the Fiscal Year 2024/25 budget to increase Wastewater Operations Fund 540 by \$422,087 and Wastewater Capacity Fee Fund 550 by \$202,179 to account for the current Year 1 membrane cost of \$624,266.

## **CONTACT**

Erica Ahmann Smithies, P.E., Public Works Director  
Brian Anderson, Interim Wastewater Systems Manager

## **BACKGROUND & ANALYSIS**

### Background

The wastewater treatment process at the City's Water Reclamation Facility (WRF), also known as the Wastewater Treatment Plant, involves two primary methods: biochemical treatment and physical screening. Wastewater inflows fluctuate significantly in volume and composition throughout the day, month, and year. Despite this variability, the City is mandated to maintain consistently high effluent quality at all times. Therefore, it is essential to ensure that the WRF has sufficient hydraulic and biochemical treatment capacity to protect the environment and supply a reliable, continuous source of recycled water to customers.

The WRF is currently equipped with 704 membrane modules (Model ZW 500D), organized into 11 cassettes across four treatment trains. However, as these membranes age, their hydraulic capacity diminishes. After eight years of service, the current membranes have reached the end of their expected lifespan. This capacity decline restricts the facility's ability to manage increased inflows during winter storms, when wastewater volumes can surge to three to four times the normal dry-weather flow. This limitation became particularly evident during the storm events of 2023 and 2024.

The WRF was initially designed to handle normal dry-weather flows of 2.5 MGD (million gallons per day), with a peak wet-weather capacity of 5.0 MGD over a 48-hour period. However, during the 2024 storms, the facility could only reach a maximum flow of 4.2 MGD. In recent years, staff has presented the Council with four key improvements to enhance both the quantity and quality of effluent processed at the facility. First, the Energy Retrofit Project (ERP) was completed in 2013, which increased biochemical treatment capacity and significantly reduced energy consumption. Second, in 2015, the Council approved the purchase of new membranes. Third, in 2016, the Council authorized the design and installation of new screening equipment, including the addition of a third screen in 2016 and the replacement of 3mm screens with 2mm drum screens in 2019. These improvements have optimized the balance of influent quantity and quality. Finally, in 2016, modifications were made to the chlorine contact basins to improve chlorine contact time, a key metric for recycled water quality compliance. Despite these upgrades, the aging membranes are limiting the facility's ability to process influent efficiently, especially during high inflow periods.

There are financial risks associated with maintaining a plant at less than the needed capacity. If we cannot produce a reliable stream of recycled water, we would have to acquire potable or raw water at a much higher cost. Additionally, in a high storm event, we risk spilling stored influent into the wetlands and associated fines. Finally, we risk being unable to keep up with the requirements of future growth in the community.

The proposed installation of new membranes will restore the WRF's hydraulic capacity to 5 MGD for extended periods. Additionally, the replacement of current membrane modules and the installation of new cassettes will increase the facility's maximum hydraulic flow to 7.2 MGD. Although daily flow cannot exceed 5 MGD, the ability to operate at maximum capacity without degrading membrane integrity will allow the facility to handle higher volumes of wastewater efficiently.

#### Proposal

The City has received a proposal from Veolia Water Technologies and Solutions to replace one complete membrane train a year over a four-year period. The total cost for this project is \$3,121,330, payable over five annual installments of \$624,266.

Veolia's proposal includes replacing all existing membrane modules, installing new cassettes and modules in the vacant spaces across all four trains, and upgrading the scour aeration system to LEAPmbr, further enhancing energy efficiency. In addition, the proposal includes using the newer ZW 500D RX12 model membranes, which have a higher hydraulic capacity than the current ZW 500D model.

By increasing the number of cassettes from 44 to 56, the facility will not only improve its ability to treat peak flows for sustained periods, but also extend the lifespan of the membranes due to reduced stress on individual modules.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

Infrastructure: "Develop and maintain infrastructure resources to support sustainable growth."

### **FISCAL IMPACT**

The cost of purchasing new membranes (\$3,121,330) is proposed to be paid over a period of five years. The existing membrane replacements were included in the recently adopted wastewater user fee structure and will utilize operating budget (\$2,110,433), the cost for membranes that increase the plant's hydraulic capacity will utilize wastewater capacity fee budget (\$1,010,897).

The annual cost of the replacements (\$624,266) will be included in the Wastewater Operations Fund 540 (\$422,087) and Wastewater Capacity Fee Fund 550 (\$202,179) FY2024-2025 Budget and each successive year thereafter for five years.

### **ENVIRONMENTAL REVIEW**

15301 - The Project is exempt from review under the California Environmental Quality Act ("CEQA") under the Class 1 exemption of existing facilities of Section 15301 of Title 14 of the California Code of Regulations and said exemption is not negated by any exception under Section 15300.2 of said Regulations.

### **ATTACHMENTS:**

- [1. Resolution Veolia Water Technologies](#)
- [2. Veolia Proposal](#)

**RESOLUTION NO. 2024-**

**AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT WITH VEOLIA WATER TECHNOLOGIES AND SOLUTIONS FOR THE PROCUREMENT OF EIGHT HUNDRED NINETY-SIX (896) "ZW500D RX12 430 FT<sup>2</sup>" MEMBRANE MODULES, TWELVE (12) ZW500D LEAPMBR 16M CASSETTE FRAMES, AND ASSOCIATED MATERIALS FOR EXISTING CASSETTE REFURBISHMENT AND LEAPMBR UPGRADE, FOR USE AT THE WATER RECLAMATION FACILITY FOR A TOTAL COST OF \$3,121,330 AND AMENDING THE FISCAL YEAR 2024/25 BUDGET TO INCREASE WASTEWATER OPERATIONS FUND 540 BY \$422,087 AND WASTEWATER CAPACITY FEE FUND 550 BY \$202,179 TO ACCOUNT FOR THE CURRENT YEAR 1 MEMBRANE COST OF \$624,266**

**WHEREAS**, the City's Water reclamation facility (WRF) utilizes a micro-membrane filtration process; and

**WHEREAS**, the current membranes were commissioned in 2015 and have reached their life expectancy; and

**WHEREAS**, a membrane's hydraulic capacity reduces as it ages and during the last several storm events they experienced difficulty treating the increased volumes of influent in a timely manner; and

**WHEREAS**, the WRF currently utilizes a total of forty four (44) Veolia Water Technologies and solutions "ZW 500D" membrane cassettes which are proposed to be replaced with fifty-six (56) newer, higher hydraulic capacity "ZW 500D RX12" membrane cassettes.

**WHEREAS**, the cost of the existing full membrane replacement including additional capacity membranes is \$3,121,330 and was included in the adopted wastewater user structure fee; and

**WHEREAS**, Veolia will replace one complete membrane train a year for four years; and

**WHEREAS**, the cost of purchasing the new membranes is proposed to be paid over 5 years; and

**WHEREAS**, the annual cost of \$624,266 will be provided for in Wastewater Operations Fund 540 (\$422,087) and Wastewater Capacity Fee Fund 550 (\$202,179) in Fiscal Year 2024-2025 and every year thereafter.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of American Canyon hereby authorizes the City Manager to enter into a purchase agreement with Veolia Water Technologies and Solutions for the purchase of eight hundred ninety-six (896) "ZW 500D RX12" membrane modules, twelve (12) ZW 500D LEAPmbr cassettes and associated materials for existing cassette refurbishment and LEAPmbr upgrade for the Water Reclamation Facility for a total cost of \$3,131,300; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the City Council of the City of American Canyon, hereby amends the Fiscal Year 2024/25 Budget to increase Wastewater Operations Fund 540 by \$422,087 and Wastewater Capacity Fee Fund 550 by \$202,179 to account for the current Year 1 Membrane cost of \$624,266.

**PASSED, APPROVED and ADOPTED** at a regularly scheduled meeting of the City Council of the City of American Canyon held on the 15<sup>th</sup> day of October, 2024 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVE AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney



# Membrane Replacement Agreement

<b>To:</b>	City of American Canyon, referred to here as American Canyon or Buyer	<b>Date:</b>	September 24, 2024
		<b>No. of Pages:</b>	28 including cover
<b>Attention:</b>	Nolan Garcia	<b>Email:</b>	<a href="mailto:NGarcia@cityofamericancanyon.org">NGarcia@cityofamericancanyon.org</a>
<b>Plant Address:</b>	151 Mezzetta Court American Canyon, CA 94503	<b>Telephone:</b>	707 647 4527
<b>From:</b>	Jason Diamond Regional Lifecycle Manager Western USA	<b>Email:</b>	<a href="mailto:jason.diamond@veolia.com">jason.diamond@veolia.com</a>
		<b>Cell No.:</b>	905 399 7055
<b>CC:</b>	Brian Anderson, Brad Leidecker (CHC)		
<b>Subject:</b>	<u>Membrane Replacement Agreement (MRA):</u> materials, off-site and on-site support	<b>Proposal No.:</b>	615771-2
		<b>Original Project No.:</b>	500054
<b>Plant Data:</b>	Please provide corrections if inaccurate American Canyon WWTP – Municipal Sanitary Wastewater Treatment. 4 trains, each train with 11 x 16M cassettes with ZW500D 370ft <sup>2</sup> membranes. Initial Substantial Completion date: August 2002.		



## Proposal Provisos

This proposal has been issued based on the information provided by the customer and on information currently available to Veolia Water Technologies & Solutions at the time of proposal issuance. Any changes or discrepancies in site conditions, including but not limited to changes in system influent water characteristics, changes in environmental health and safety (EH&S) conditions, changes in the reissued state/provincial disposal system permit, changes in buyer financial standing, buyer requirements, or any other relevant change or discrepancy in the factual basis upon which this proposal was created may lead to changes in the offering, including but not limited to changes in pricing, guarantees, quoted specifications, or terms and conditions.

## Confidential and Proprietary Information

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# 1 Introduction

Veolia Water Technologies & Solutions is pleased to present this proposal to the City of American Canyon for a Membrane Replacement Agreement (MRA) for replacement and additional wastewater membranes at the American Canyon Wastewater Treatment Plant.

It is expected that American Canyon will require replacement and additional membranes within the next 5 years and that membrane replacement will be staggered, with one train replaced per replacement event.

Veolia will provide our latest wastewater membrane, the ZW500D RX12, with 430ft<sup>2</sup> of surface area per membrane. See Attachment A for further product information.

The scope of this agreement will include the following:

- ZW500D RX12 430ft<sup>2</sup> replacement and additional membranes;
- ZW500D 16M LEAPmbr cassettes;
- ZW500D cassette refurbishment components – 16M;
- Components and off-site support to upgrade existing cassettes to LEAPmbr aeration;
- On-site membrane installation, cassette refurbishment and LEAPmbr upgrade assistance.

Details of the scope are set out in the sections below.

Veolia is a proven leader in delivering tangible value to our clients over the life of the plant. Our measure of success is how well we deliver **solutions** that help our clients meet their critical business objectives. Benefits of this agreement include:

- Timely lifecycle costs over the period of the agreement
- Planned membrane replacement

Through long-acquired membrane experience, Veolia has clearly distinguished itself from other membrane manufacturers. A mature service culture and deep technical expertise are at the ready to serve and support American Canyon through this next membrane lifecycle.

*Veolia would like to note that under the current exceptional circumstances across global supply chains and logistics networks, Veolia may not be in a position to guarantee and comply with the planned schedule for product / project delivery or performance. Veolia reserves the right to modify the schedule / contract accordingly. Veolia will promptly inform you of any changes which may impact the contract.*

## 2 Membrane Replacement Agreement

Through the term of this agreement, Veolia will provide a quantity of membranes to replace the existing full plant of ZW500D 370ft<sup>2</sup> membranes, and additional membranes and cassettes to populate all existing cassette spaces at the American Canyon WWTP.

Based on the projected life of the current membranes and the planned start date of this agreement, Veolia anticipates the following replacement schedule\*:

Agreement Year:	1	2	3	4	5	Total
370ft <sup>2</sup> membranes replaced	176	176	176	176	---	<b>704</b>
430ft <sup>2</sup> membranes provided	224	224	224	224	---	<b>896</b>

\*Through the term of this agreement, Veolia will work with American Canyon to determine the actual timing of replacement events based on plant performance and membrane condition, with the ultimate goal to maximize membrane life.

It is possible that, through virtue of good membrane management and plant operation, American Canyon may extend membrane life of the current membranes beyond the end date of this agreement. To avoid unnecessary premature replacement, American Canyon may choose to defer delivery of membranes into a future year provided that all membranes are received and accepted within a 3-year period following final billing for the agreement.

This membrane replacement agreement provides assurance to the City of American Canyon that over the course of the agreement, Veolia will provide the membrane modules specified or equivalent for use at the American Canyon WWTP.

For optimal economics and to follow best membrane replacement practices, pricing is based on replacing multiples of at least 1 train worth of membranes at a time. Should American Canyon request quantities other than a minimum of 1 full train per installation event over the term of this agreement, an adjustment to the annual invoice may be made to account for additional costs.

\*Pricing is based on the proposed replacement schedule provided in the table above. If the actual shipment schedule is accelerated, additional cost/payments may be required.



### 3 Veolia Scope & Price

Veolia’s scope includes the material and services outlined in the table below. The sections that follow provide additional detail regarding each scope item.

Item Description	Part #	Quantity	Price
ZW500D RX12 430ft <sup>2</sup> membrane modules, section 4.1	3178087	896	2,414,230
ZW500D LEAPmbr 16M cassette frames, section 4.1	3184788	12	
	3184265*		
2-year full replacement membrane warranty, section 11		Incl.	
Cassette refurbishment and LEAPmbr upgrade, sections 4.3 and 4.4		Incl.	
Hardware, section 4.2		Lot	
<i>Estimated applicable tax on materials only (7.75%)**</i>		<i>Incl.</i>	<i>186,793</i>
<b>Materials, including estimated applicable tax</b>		<b>Sub-total</b>	<b>2,597,023</b>
Off-site support, project management, section 5.1		Incl.	76,810
International shipment, fees, and duties, section 6		Incl.	260,937
Freight, DDP project site, section 6	3095534	Incl.	
<b>Off-site labor, delivery</b>		<b>Sub-total</b>	<b>337,747</b>
<b>Materials, off-site labor, delivery</b>		<b>Sub-total</b>	<b>2,934,770</b>
On-site support – 2 x FSRs, each on site for a total of 36 x 10-hour days over 4 visits to site, plus travel & living, section 5.2	135491	4 visits	186,560
<b>On-site support</b>		<b>Sub-total</b>	<b>186,560</b>
<b>All figures are in USD. Please make purchase order to ZENON Environmental Corporation. Estimated taxes have been included, but tax rates applicable at time of invoicing will be used.</b>		<b>Total Price</b>	<b>3,121,330</b>
Annual payment			624,266

\*Part numbers provided above represent modules shipping in 16M LEAPmbr cassette frames (3178087), 30M shipping frames (3184788), and loose bag & box (3184265).

\*\*Sales tax estimated at current rate of 7.75% for American Canyon, CA on materials as per <http://www.cdtfa.ca.gov/taxes-and-fees/rates.aspx>. Actual tax rate at time of invoicing will be added on all invoices.

Prices provided above for the total and annual fee are prior to annual inflation adjustments.

The annual fee is based on a proposed 5-year agreement duration starting in 2024, and will be subject to annual adjustments for inflation increases through the term of the agreement



based on changes in the US Consumer Price Index, all items in US city average, all urban consumers, not seasonally adjusted – series I.D. [CUUR0000SA0](#).

Annual Adjustments:

$$\text{Annual Fee} \times \left( 1 + \left( \frac{\text{Index-1A} - \text{Index-1B}}{\text{Index-1B}} \right) \right)$$

Where **Index-1A** is the current month/year and **Index-1B** is the month/year 12 months prior. The index used will be the latest available at the time of each calculation – which will typically occur just prior to the start of each agreement year. Each adjustment will be applied to the annual fee in place at the time of each calculation.

In any instance of a reduction in the year-over-year inflation indexes, the annual invoice value will be held the same as the previous year.

The annual fee will be invoiced each year at the beginning of the period. Should the agreement be terminated for any reason, please see section 12 item 8.

**Proposal Notes:**

- **Price Review.** Notwithstanding the terms set forth herein or of any agreement or acceptance of Seller’s quotation, Seller reserves the right at any time and from time to time by notice in writing to the Buyer to (a) determine periodic price reviews based on Goods’ raw material increase arising from currency devaluations (b) increase Prices (or impose temporary price adjustments) based on increases in the cost of base components for the Goods or Services provided, where the increase is due to increased global demand, limited supply, temporary product shortages, allocation of supply, or such other similar inflationary pressures; and (c) impose a surcharge equal to any increase in the cost of the Goods or Services as a result of a modification of exchange rates, duties, taxes or other levies imposed by public authorities.
- **Shipment/Collection Delays:** *The membrane sale will be subject to price adjustment if not collected within 1 month of Readiness for Shipment. After the one month of Readiness for Shipment if Purchaser does not send his agreement to receive or collect the membranes (depending on Incoterms), Seller is entitled to reallocate the membranes to another customer.*

---

## 4 Material Description

The following materials are provided within Veolia's scope of supply.

### 4.1 Membrane Modules & Cassettes

- Veolia will provide 896 x ZeeWeed 500D 430ft<sup>2</sup> wastewater membrane modules
- Veolia will provide 12 x ZW500D 16M LEAPmbr cassettes. See Attachment B for further product information.

### 4.2 Hardware

- 160 x #118 EPDM permeate spigot o-rings;
- 40 x ZW500D element end cap keys;
- 12 x ZW500D blank header sets;
- Hanging arms and leveling pins for 12 x new LEAPmbr cassettes;
- Permeate and aeration connections for 12 x new LEAPmbr cassettes;
- Safety hoist ring for new 16M LEAPmbr cassettes (1 set);
- Tees and CPVC elbows for combining cassette air line connections into one;
- 16 x o-ring lubricant (food grade);
- 8 x anti-seize lubricant (food grade).

### 4.3 Cassette Refurbishment

Veolia will supply components for refurbishment of 44 x existing 500D 16/16M cassettes, including spares.

Cassette refurbishment service allows you to fully recondition your cassettes at less cost than purchasing new cassettes. Cassettes will be refurbished at the American Canyon facility. Cassette refurbishment includes the following:

- Removal of all existing plastic parts and associated hardware,;
- If slack adjustment has been completed on cassettes, return the cassette to the initial factory membrane slack position;
- Installation of all new, current design parts (module mountings, securing mechanisms), and all associated hardware;
- On-site cassette refurbishment service by trained Veolia field service representatives – details provided in sections 5.2 and 8.2.



## 4.4 LEAPmbr Aeration Upgrade

The 12 x new 16M cassettes provided will be configured with LEAPmbr aeration. Veolia will supply components to upgrade the existing 44 x ZW500D 16M cassettes to LEAPmbr aeration.

---

# 5 Veolia Support

## 5.1 Off-Site Support

### Controls

Provide system controls programming adjustments as required for the new membranes including adjustment of set points for air flow and LEAPmbr aeration.

If there is a requirement for the EEPROM (Electrically Erasable Programmable Read-Only Memory) to be stored, a period of plant shutdown must be arranged by American Canyon.

### Documentation

The base level of documentation updates will include field/hand markups of relevant electrical and P&ID drawings. These updates should be filed in the O&M manual as interim documentation. Following installation, Veolia will provide:

- **P&IDs** - Update the process (piping) & instrumentation drawings and reissue electronically;
- **Controls documents** – Update control narrative (CN), controls logic sequence chart (CLSC, also known as CSC) and the operation sequence chart (OSC).

Due to the very high cost of comprehensive updating of plant documentation with each system upgrade, Veolia recommends planning a complete documentation update every 1-4 years to coincide with a selected system upgrade.

Veolia will be pleased to develop a documentation update price quotation on request which may include some or all of the following scope according to its relevance:

- **O&M manual** - Provide a fully updated version of the operation & maintenance manual that indicates the changes made with this membrane replacement upgrade;
- **Electrical drawings** – Update the electrical drawings and reissue electronically.

### Project Management

Provide planning and off-site assistance during the membrane replacement project.



## 5.2 On-Site Technical Services

The proposal includes a provision for technical services during installation and commissioning process to support American Canyon's staff as outlined in section 3. Please see section 8.2 for recommendations on the plant staff necessary to perform the work.

Installation and commissioning of membranes will be executed in a manner that minimizes down-time and returns the system to beneficial use in a timely manner.

The following activities will be completed jointly by plant staff and Veolia:

- Remove existing membranes/cassettes;
- Install cassette refurbishment and LEAPmbr aeration upgrade components;
- Install the new membrane modules/cassettes;
- Upload required revisions to the PLC program with adjusted set-points;
- Perform bubble test where applicable to test membrane integrity and review trans membrane pressure (TMP) on the installed membranes and compare to expected values for new membranes; complete repairs/adjustments necessary to provide new membrane performance.

**Operating Responsibility** - American Canyon retains control of the work site and retains final responsibility for the installation and commissioning process.

Veolia will perform the services specified in the scope section of this document, but Veolia will not operate the system. For the purposes of this agreement, the term "operate the system" shall mean to run or control the functioning of the equipment or to otherwise conduct or manage the affairs of any aspect of water or wastewater treatment or other functions at American Canyon's site, and shall include functions such as providing operators or laborers to adjust or control water treatment ("WT") equipment, wastewater treatment ("WWT") equipment or sludge management facilities ("SMF"), providing program oversight or directing on-site or contract operators/laborers to adjust or control WWT or SMF, providing personnel responsible for or providing oversight of water treatment residual quality, wastewater effluent quality, sludge quality, waste characterization, or waste disposal activities, or providing personnel with continual or daily operational responsibilities with respect to water or wastewater treatment, influent or effluent compliance monitoring, process monitoring, government reporting or notification, or permit compliance.

**Waiting Time** - Any overtime or waiting times required due to unforeseen site events outside the control of Veolia will be invoiced according to the prevailing Veolia service labor rates sheet, available on request.



**Reporting** - Before leaving site, Veolia will record observations and discuss with operators concerning the condition of the equipment, tasks accomplished during the visit, and key operating and maintenance issues requiring further attention. Veolia will provide a copy of a written report before leaving site and/or provide a service visit report to the plant operator within a reasonable timeframe of the Veolia service representative's return to the office. In any case, American Canyon will be asked to sign a work order that describes the hours on site and tasks accomplished.

#### **Veolia Duties for On-Site Services**

- Veolia will coordinate its work under this agreement in a reasonable manner with the operating staff of the facility.
- Veolia will maintain public liability and property damage insurance covering all operations undertaken by Veolia and its sub-contractors with a limit of \$5,000,000 inclusive for any one accident or occurrence. If for any reason additional insurance coverage (e.g. general construction/erection all risk, general liability) is required above and beyond Veolia's standard insurance terms for on-site commissioning supervision, American Canyon must inform Veolia in writing 60 days prior to work commencement at site. American Canyon will be billed for all additional insurance costs and processing fees.
- Veolia will maintain workers compensation and employers' liability coverage as per statutory requirements.

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## **6 Delivery**

- **Freight**
  - **DDP** - Delivery will be by standard ocean/ground on the basis of DDP American Canyon WWTP, or other named place of destination; Incoterms 2020. DDP = delivery duty paid. Partial shipments will be acceptable unless otherwise specified. Where delivery cannot be accepted at this destination, American Canyon shall specify an alternate, equivalent destination without delay.  
  
Due to varying origins and availability, non-membrane items included in this proposal may be shipped separately from the membranes. Should separate shipments be required, where possible, Veolia will strive to provide these items on or before the delivery of the membranes.
  - **Title & Risk** - Title and risk of loss or damage to membrane modules, cassette frames, shipping frames, hardware and crating shall pass to American Canyon upon delivery at the named place of destination.
- **International Shipment, Fees, and Duties**



- **Origin** - Delivery of ZeeWeed membranes originates from the Veolia Water Hungary Kft, Bláthy Ottó u 4, Oroszlány, 2840 Hungary facility. Costs to transport membranes into North America are included in Veolia’s quoted price.
- **Export Documents** - All ZeeWeed membrane module shipments into the USA require clearance documentation from the EPA. Veolia will prepare and provide the required EPA documentation to the Carrier.
- **MPF** - Merchandise processing fee is a fee assessed for formal custom entries based on 0.35% of the invoice value, with a minimum of USD \$25 per formal entry and a maximum of USD \$485. On the basis of DDP terms, this fee will be paid by Veolia within the quoted price.
- **Duty** - A US Customs duty of 3.9% applies to all ZeeWeed membranes shipped individually or in shipping frames; not in operational cassette frames. On the basis of DDP terms, this duty will be paid by Veolia within the quoted price. Any new duty imposed after the date of this proposal is the responsibility of American Canyon.
- **Taxes** - All applicable local, state, or federal taxes are the responsibility of American Canyon.
- **Temperature** - UF membranes cannot be allowed to freeze or overheat and may require temperature-controlled freight and handling according to the season and the planned routing. If required, the price of temperature control will be included within the firm quote on freight by Veolia.
- **Packaging** – Membranes will be delivered in a combination of operational cassette frames and shipping frames (factory installed), and individually bagged, boxed and crated.
- **Unloading** - may require one of or a combination of a loading dock, extended forks and an experienced forklift driver at delivery destination. Please consult with Veolia at the time of purchase order (PO) preparation on this.

Shipping crate information (estimated) – per train

Qty	Description	Dimensions (in)	Weight (lb)
3	ZW500D 16M cassettes	L=107 x W=35 x H=80	1,421
4	ZW500D 30M shipping frames	L=37 x W=89 x H=94	2,286
1	ZW500D 14M crate	L=94 x W=74 x H=46	1,325
3	ZW500D 4M crate	L=38 x W=93 x H=28	477

Notes:

- Only crates for membrane/cassette transport have been shown above to identify the largest and heaviest items that will need to be unloaded;
- Smaller crates/skids will be used for hardware items (hanger arms, spool connection components, etc.).



- **Handling** – ZW500D 16M membrane cassette frames are shipped and will arrive on-site on their sides. An eye bolt kit, included in this proposal, should be used to safely turn the cassette(s) upright. Adequate work area and height and equipment will also be needed to be available to safely turn the cassettes upright for installation.
- **Availability** – With current global logistics and freight delays we are experiencing significant increases in lead times. Definitive availability will be confirmed upon each request for membranes from American Canyon. Longer lead times should be taken into consideration in the course of membrane replacement planning.

## 7 ZeeWeed Configuration

Configuration Data	Units	Existing Plant Configuration	Configuration After Replacement & Addition
Number of trains, plant		4	4
Type of ZeeWeed membrane		500D	500D
Module surface area	ft <sup>2</sup>	370	430
Total number of cassette spaces per train		14	14
Maximum number of modules per cassette		16	16
Fully populated cassettes installed per train		11	14
Flex cassettes installed per train		---	---
Installed number of modules / flex cassette		---	---
Total module count, train		176	224
Total surface area in operation, train	ft <sup>2</sup>	65,120	96,320
Total module count, plant		704	896
Total surface area in operation, plant	ft <sup>2</sup>	260,450	385,580
% surface area change from existing, plant	%	---	47.9%

## 8 Scope - American Canyon

### 8.1 Installation Preparation

- Receive, off-load, handle and provide temperature-controlled storage of the equipment and materials required for Seller to perform the duties outlined in the Seller's scope of supply. Prior to off-loading, Buyer to confirm temperature indicators have not been tripped.



- Membranes must be stored in a sheltered area, protected from freezing, direct sunlight or extreme heat, and sealed as shipped until ready for use. Storage should be in a dark, dry, level area at a temperature of 5-30°C (41-86°F). Membranes have a shelf life of 1 year before requiring re-preservation and should not be stored longer than necessary prior to installation. American Canyon is responsible for risk of loss of Seller's parts while in storage at the customer's plant.
- Inspect, evaluate and make repairs as required for the membrane tanks, mounting brackets, hoses and all connections prior to Veolia arriving at site.
- Provide all access structures (such as scaffolding) and mechanical lifting equipment including cranes, forklifts and scissor lifts.
- Assure availability of a copy of the operating manual, all process and instrumentation drawings, and all electrical drawings on site and accessible for reference.
- Maintain adequate insurance coverage for the risks of fire, theft, vandalism, floods and personal injury to authorized or unauthorized visitors.

## 8.2 Installation

- Provide at least 2 plant personnel to work continuously for the full duration of the Veolia site visit during installation and commissioning of the modules. Veolia recommends that the personnel be experienced with the ZeeWeed system.
- American Canyon will afford Seller's personnel free access and egress of the facility for all authorized work. American Canyon will provide reasonable access to workshop facilities with standard workshop tools and equipment as is necessary to meet any repair and maintenance requirements of the system during installation. American Canyon will provide Seller's personnel reasonable access to the facility amenities, including washrooms and break rooms.
- Provide adequate illumination and emergency lighting for all areas in which the Seller will be executing the scope of supply. Provide all site utilities such as raw water, instrument quality air, potable water and power required for operation of the proposed equipment included in this scope of supply. Assure that adequate quantities of membrane cleaning and neutralizing chemicals are on hand for wash procedures including sodium hypochlorite, sodium bisulphite, citric acid and sodium hydroxide. Supply telephone/fax/modem access while Seller's staff members are on-site.
- American Canyon will provide assistance to:
  - Remove cassettes from the system as required;
  - Clean each cassette as it is removed from the system;



- Install cassette refurbishment and LEAPmbr upgrade components;
- Place new modules into each refurbished cassette;
- Return the refurbished cassettes to the system;
- Install new additional cassettes with hanging arms and permeate & aeration connections.
- American Canyon will:
  - Dispose of all retired membrane modules and cassette components;
  - Dispose of shipping and packaging materials unless specifically requested not to do so by Veolia;
  - Prepare shipping frames for return to Veolia, see section 8.3;
  - Load shipping frames onto the truck for return to Veolia – Veolia will be responsible for organizing the logistics of delivery back to Veolia.

### 8.3 Empty Shipping Frame Preparation

All shipping frames returning to Veolia must be well cleaned and packaged appropriately for trans-oceanic transport in shipping containers. Shipping frames should be cleaned using high pressure washers and mounted on wood skids to facilitate moving them in and out of the freight containers. Veolia will provide American Canyon offsite assistance to facilitate the return of shipping frames.

All wooden packaging material used for international shipments must conform to current phytosanitary standards to reduce the risk of introduction and spread of quarantine pest species associated with the movement in international trade of wood packaging material made from raw wood.

All wood packaging material used to transport shipping frames internationally, must comply with ISPM15 which is the standard for phytosanitary measures and be properly stamped indicating compliance with the standard. Failure to comply with the standard may lead to shipment refusal and subsequent project delays. For detailed information on ISPM15 please visit the [ISPM15](#) website.

Whenever possible, save and re-use the wooden skids that the shipping frames arrived on for return freight purposes.

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## 9 Solution Design Notes

### 9.1 Permits

#### Regulatory Requirements

American Canyon is responsible to review and report to the permit granting agency on the impact of any of the proposed changes on the regulatory permit. Veolia will provide the necessary manufacturer's technical support on regulatory issues.

***Please speak with your regional lifecycle manager (RLM) if there are any regulatory requirements or concerns.***

#### Utilization

Veolia understands that these modules are required as replacements for currently installed modules, and additional modules to fill existing spaces.

These modules are offered on the basis that the membrane modules will not be used to provide expanded flow beyond the current plant flow rating.

Replacing the current 704 x 370ft<sup>2</sup> membranes with 704 x 430ft<sup>2</sup> membranes provides a 16.2% surface area increase. Adding an additional 3 x 16M cassettes per train of ZW500D 430ft<sup>2</sup> modules brings the total surface area increase of the plant to 47.9%.

It is Veolia's understanding that the cassette support system (beams and brackets) is already installed in the spare space. If this is not so, please advise Veolia and request that this be added to the proposal.

#### Production Interruption

During installation of the ZeeWeed cassettes, trains will be shut down which will affect American Canyon treatment capacity. After the purchase order is acknowledged, Veolia's project manager for the installation will consult with American Canyon to jointly develop the installation plan and work schedule with due regard for membrane delivery to the plant and plant preparation.

### 9.2 Maintenance Notes for Replacement Membranes

At the time of any full plant or full train membrane replacement, it is recommended to evaluate whether it is the right time to address any tank coating repairs which may be required.

#### Preferential Flow

Mixing a small proportion of new modules in trains with large amounts of older modules is not recommended as it creates a risk of over-fluxing of new modules, which can shorten their lives. For ZW500D membranes, the mixing of old and new modules in the same cassette makes slack adjustment more difficult. Veolia recommends that American Canyon plan membrane module replacement on a complete cassette and complete train basis wherever possible to achieve both optimal performance and best value from the new



membrane modules. In this case, by replacing all membrane modules in the plant on a per train basis, this risk has been neutralized.

### Membrane Slack

Veolia’s membranes are supplied and shipped with an initial factory fiber slack designed to optimize membrane air scouring during operation as well as accommodate a degree of shrinkage. Membranes shrink in length early in their lifecycle when exposed to higher temperature water. The pace of shrinkage slows with age. With the installation of new membranes, the requirements for slack adjustment start a new cycle.

Due to the wide variety of operating environments in which our products can be utilized, it is difficult to generally predict the rate of shrinkage. If membranes operate in a condition of insufficient slack for an extended period of time, irreversible damage to the fiber-urethane bond may occur. Please refer below to the recommended inspection frequencies based on your plant’s membrane tank operating temperature. Visual inspections should begin during the membrane installation and be repeated over time on the same cassette. Digital pictures will allow for comparative analysis of the fiber slack over time.

Maximum Operating Temperature	Recommended Slack Inspection Frequency
0-24 °C / 32-76 °F	every 2 years
25-30 °C / 77-86 °F	once per year
>30 °C / > 86 °F	twice per year

### Bubble Test Pressure

The bubble test pressure for the purchased membranes is 2 psi horizontally and 3 psi vertically.

## 9.3 Technical

### Module Upgrade – 370ft<sup>2</sup> vs 430ft<sup>2</sup>

Upgrading from the ZeeWeed 500D 370ft<sup>2</sup> module to ZeeWeed 500D 430ft<sup>2</sup> module offers the following advantages:

- 16.2% increase in membrane module surface area;
- Increased membrane module surface area without any changes to the overall dimensions of the module;
- No increase in chemicals for maintenance or recovery cleans due to increased surface area;
- Improved membrane chemistry that allows for greater permeate productivity per square foot of membrane area without impacting water quality.



## Other Considerations

### Hoses & Fittings

Veolia has assumed for this proposal that the aeration and permeate cassette connections for the ZW500D cassettes currently in operation do not need replacing at this time. If this is not so, please advise Veolia and request that they be added to this proposal.

### Blowers

For the purposes of this proposal, the range of blower capacity has been assumed to be adequate for this upgrade.

Should resheaving parts be required they can be supplied by Veolia at additional cost to American Canyon or alternatively Veolia will assist in specifying the needed components. Mechanical and electrical adjustments required to meet new air flow will be completed by American Canyon or their 3<sup>rd</sup> party designate. Veolia will provide American Canyon correct air flow requirements for the new plant configuration.

### Pre-Screen

Trash and non-biodegradable solids, such as hair, lint, grit and plastics may foul or damage the membranes if allowed to pass into the membrane chamber. Veolia recommends that an internally-fed screen with mesh or punched-hole openings less than or equal to 2 mm with no possibility of bypass or carryover be operated upstream of the new membranes to ensure effective operation and to maximize membrane life.

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## 10 Health & Safety

### American Canyon

- American Canyon will provide orientation to Seller's personnel to ensure site-specific safety protocols are known. American Canyon will identify and inform Seller's personnel of any site-specific hazards present in the workplace that could impact the delivery of Seller's scope of supply and agrees to work with Seller to remove, monitor, and control the hazards to a practical level.
- American Canyon will provide any site-specific or standard company operating procedures and practices for Seller's personnel to perform work on site, if required by American Canyon's policies. Such programs may include, but are not limited to, general environmental health & safety (EHS), HAZOP, fire protection, drug testing, incident notice, site conduct, standard first aid, chemical receiving, electrical safety, etc. American Canyon will provide a certificate of program completion for Seller's personnel. This program will be fully documented, training materials will be provided, and attendance list will be kept.



- If any type of lifting devices will be used on site, American Canyon will provide proof of its maintenance, inspection and certification documentation upon request and will assist the Veolia service representative to complete a safety inspection checklist.
- Where confined space entry may be required, American Canyon will provide early notice and will collaborate with Veolia in planning adequate staffing and in advising the local fire/rescue department as required.
- No time or cost provision has been made for preparations such as safety record clearances, drug testing, insurance confirmations or pre-job-training in excess of 1 hour. Prior to finalizing the Purchase Order and the work schedule, American Canyon will advise Veolia of any pre-job or pre-mobilization requirements. Where these requirements exceed 1 hour, this time will be charged to American Canyon at rates set out in the prevailing Veolia labor rate sheet.
- Where certain short duration activities require two people for safety and the Veolia Service representative is alone at site, American Canyon will cooperate as required to assure that correct safety precautions are taken.
- American Canyon is responsible for the following environmental provisions:
  - Environmental use and discharge permits for all chemicals at American Canyon's facility either listed in this document or proposed for use at a later date;
  - Any special permits required for Seller's or American Canyon's employees to perform work related to the water treatment system at the facility;
  - All site testing, including soil, ground and surface water, air emissions, etc.;
  - Disposal of all solid and liquid waste from the Seller's system including waste materials generated during construction, start up and operation.
- American Canyon is responsible for provision of health and safety facilities to Seller's field service representatives to the same extent that they are provided to American Canyon's own employees, including provision of:
  - Eyewash and safety showers in the water treatment area;
  - Chemical spill response;
  - Security and fire protection systems per local codes.

**Veolia**

- All work on site will be performed in accordance with applicable law and will be performed reasonably, in a clean and safe manner. The Veolia service representative will abide by the more stringent of the applicable health, safety and environmental policies and procedures of either American Canyon or Veolia.



- Veolia will provide all applicable safety training required by Veolia policies or by state or national health and safety regulations. The Veolia service representative will have undergone workplace hazardous material information system (WHMIS) training and will come equipped with necessary personal protective equipment (PPE).
- Emergencies - In emergencies affecting the safety of persons, work or property at the site and adjacent thereto, Veolia will act, without previous instructions from American Canyon, as the situation warrants. Veolia will notify American Canyon immediately thereafter.

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## 11 ZeeWeed Membrane Module Standard Warranty

This schedule sets out the warranty with respect to ZeeWeed membrane modules (“membrane modules”). No other warranties, expressed or implied are made in connection with the sale of these products, including, without limitation, warranties as to fitness for any purpose or use or merchantability of these products. The warranty provided herein will be the exclusive and sole remedy of Buyer. This warranty is not transferable.

### 1. Definitions

The follow terms shall have the meaning set forth below when used in the warranty document:

- a. “Buyer” means the party purchasing the ZeeWeed Modules from the Seller
- b. “Seller” means a business component of, or legal entity within the Veolia Water Technologies & Solutions business which is selling the ZeeWeed membranes.

### 2. Warranty Product

This warranty applies to only the membrane modules supplied under the contract of sale. Membrane module means the hollow fiber ultrafiltration membranes and the potted plastic headers. This warranty does not cover air piping to the membrane module, permeate piping from the membrane module, piping connection fittings, connecting hardware and cassette frames with their associated components including but not limited to spacers, aerator tubes, aerator assemblies, screen, module dummies or module blanks.

### 3. Scope of Warranty

The Seller warrants that its membrane module(s) will be free of defects due to faulty materials or errors in manufacturing workmanship.

Regular membrane module inspection and normal fiber repair shall be the responsibility of Buyer.

All replacement membrane modules will be shipped on the basis of INCOTERMS 2020 FCA Veolia manufacturing facility.



All ancillary costs including but not limited to bagging, boxing, crating, freight, freight insurance, applicable taxes, import duties, certifications, brokerage, receiving, forklift services, storage at site, reattachment hardware, hose/clamp/camlock replacement, crane services, installation, fiber repair materials, glycerin flushing, commissioning and waste disposal are the responsibility of Buyer.

#### 4. Warranty Start Date

Membrane warranty will start on the earlier of:

- a. The date that installation of the original membrane module(s) has been substantially completed, or
- b. Three (3) months from the date of delivery of the original membrane module(s) to Buyer.

#### 5. Warranty Duration

**Total Warranty Duration:** a total of **24** months of full replacement warranty coverage.

#### 6. Notification Of Claim

All claims filed under this warranty shall be made in writing by Buyer within 30 days of identifying a defect.

Buyer shall provide the following information:

- a. A description of the defect giving rise to the claim;
- b. Photographs showing the manufacturing defect;
- c. The serial number(s) of the membrane module(s) which is (are) the subject of the warranty claim; and
- d. Operating data and repair history for the life of membrane modules which are the subject of a warranty claim.

#### 7. Verification of Claim

After receipt of written notification of a defect, the Seller will promptly undertake such investigations as, in the Seller's opinion, are necessary to verify whether a defect exists. The Seller reserves the right to require additional data as necessary to validate claims. Buyer may, in the course of these investigations, be requested to return membrane module(s) to the Seller for examination (see item 11). The Seller may also conduct reasonable tests and inspections at Buyer's plant or premises. If the results of the investigation do not validate the defect claimed, Buyer will reimburse the Seller for all reasonable expenses associated with said investigation, including expenses for all tests, inspections, and associated travel.

#### 8. Satisfaction of Claims

The Seller will have the right to satisfy claims under this warranty in a flexible manner. Such flexibility may include the repair of existing membrane modules or changes in operating protocols or membrane module replacement or by upgrading failed membrane modules with newer membrane module(s) that may embody design and efficiency improvements. Buyer consents to the supply of replacement membrane modules which may be of a different design than original membrane modules.



## 9. Operating Information

To maintain the membrane module warranty, membrane system operation records from initial start-up date until claim must be maintained by Buyer and made available to the Seller upon request. Records must be provided in sufficient detail as applicable to verify the subject of a warranty claim and can include but is not limited to, operation data including information on feed water quality, temperatures, flows, trans-membrane pressures, aeration rates, permeate quality, cleaning intervals, cleaning chemical concentrations, elapsed time since start-up, relevant analytical data and reporting of any screen bypass events.

Buyer shall maintain and share access to a single reference copy in electronic form of a membrane module map containing the history of activity by membrane module and the serial number for each module. Buyer shall log its procedures performed related to a membrane module including relocation of membrane modules, repairs, replacements and any other noteworthy events.

Buyer authorizes the Seller to conduct any reasonable review of operation and maintenance records or to inspect facilities where membrane modules are installed, upon reasonable notice to Buyer. Such reviews and/or inspections are intended to also assist the Seller and Buyer in detection of membrane system faults and to optimize the care and operation of the membrane modules.

## 10. Limitation of Warranties

Occurrence of any of the following as reasonably determined by the Seller will void this warranty:

- a. A material failure to operate the membrane system in accordance with Seller's operations and maintenance manual supplied to Buyer as part of the contract, including material failure to adhere to the Seller's specified membrane module cleaning procedures and the use of anything other than Seller-approved membrane module cleaning agents.
- b. Failure to adhere to the preventive maintenance program as presented in the Seller's operations and maintenance manual, in published product manuals and in specifications.
- c. Failure to adhere to all transportation and storage requirements. ZeeWeed membrane modules may be stored up to 12 months from date of receipt and must be transported and stored in original intact packaging out of direct sunlight in ambient temperatures between 5-35 Degrees Celsius. Storage beyond 12 months from date of receipt requires a written request to Veolia to maintain membrane module warranties.
- d. Introduction of destructive foreign materials and chemical agents into the membrane module.
- e. Failure to maintain and provide system operating data and repair history for the life of membrane modules which are the subject of a warranty claim.
- f. Physical abuse or misuse, incorrect removal or installation of membrane modules by non-Seller personnel including fiber damage caused by operator error in handling of membrane modules or cassettes.
- g. Unauthorized alteration of any components or parts originally supplied by the Seller.
- h. Intentional damage.



## 11. Return Procedure

In the event that the return of a membrane module is required pursuant to this warranty, Buyer will first obtain a Return Goods Authorization (RGA) number from the Seller. Membrane module(s) shipped to the Seller for warranty examination must be shipped freight prepaid in environmentally controlled freight and storage with ambient air temperature between 5-35 degree Celsius. If Buyer desires temporary replacement membrane module(s) to replace those alleged to be defective and returned to the Seller for warranty examination, Buyer shall be responsible for the cost associated with any such replacements until examination of the returned membrane modules pursuant to this warranty is complete. Any membrane module examined by Seller as part of a warranty claim where the membrane module is subsequently found to be performing as warranted or where a membrane module failure is not covered under the warranty will be returned to Buyer, freight collect or disposed of by Seller and the cost associated with any membrane analysis and diagnostic work will be levied against the Buyer based on Veolia standard labor rates.

## 12. Disclaimer and Limitation on Liability

To the maximum extent permitted by law, in no event shall Seller be liable for any loss of profit or revenues, loss of production, loss of use of equipment or services or any associated equipment, interruption of business, cost of capital, cost of replacement water or power, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages arising out of or relating to the performance or actual or alleged breach of the agreement, regardless of whether a claim is based in contract (including warranty or indemnity), extra-contractual liability, tort (including negligence or strict liability), statute, equity or any other legal theory.



# 12 Terms and Conditions of Sale

## A - Specific Terms and Conditions of Sale

These terms take precedence over the general terms and conditions of sale.

### 1 Legal Entity for Contracting

**ZENON Environmental Corporation** is the name of the Seller, and means a business component of, or legal entity within the Veolia Water Technologies & Solutions business (Veolia).

Please advise us if this Veolia entity is not set up in your purchasing system as a vendor and you do have another Veolia entity set up. We are keen to make the purchase process as convenient as possible for American Canyon.

**short form:** Where a short reference is required in this document, for convenience, we are called simply **Veolia**.

### 2 Payment

Veolia prefers to receive payment by wire transfer and will also accept payment by courier check.

<b>Wire transfer information for ZENON Environmental Corporation</b> send details to: SHD WATS REMIT-NAM <a href="mailto:vtc.vwts.remit-nam.all@veolia.com">vtc.vwts.remit-nam.all@veolia.com</a>	
Bank of America Merrill Lynch C/O ZENON Environmental Corporation 901 Main Street Dallas, TX 75202	ACCT# 4426318136 ABA# 026009593 SWIFT# BOFAUS3N ACH# 111000012

### 3 Payment Terms

**On approved credit**, payment terms are **net 30 days** from customer receipt of invoice. Please see the invoicing schedule in the price section. In the event an invoice is issued on shipment of goods from a Veolia Hungarian production facility, payment terms will be extended by an additional 45 days to account for the additional transit time to the delivery location.

### 4 Proposal Validity

Prices quoted and proposal terms are valid up to **thirty (30) days** after the date of issue of this proposal unless confirmed with a purchase order.

### 5 Bonds

Performance or payment bonds are not included in the price. These can be purchased on request but will be at an additional cost.

### 6 Assignment of Membrane Warranty

The Buyer will be entitled to assign to a subsequent owner of the membranes the warranties of the Seller under this Agreement, provided that a prior written notification is sent to the Seller and the assignment agreement contains terms and conditions which provide the Seller with the protections of the warranties and limitations on liability contained in the Agreement. Subject to Buyer's compliance with the foregoing requirement, such warranty rights are expressly assignable by the Buyer to a subsequent owner of the membranes. Except as provided herein, Buyer is not entitled to extend or transfer this warranty to any other party.

### 7 Flight Booking

Prices quoted for installation which include airfare are either based on timely confirmation of a visit schedule or based on receipt of a purchase order in time to book any flights seven days in advance. Additional airfare charges related to late arrival of a purchase order will be extra and billed through to American Canyon without mark-up.



## 8 Early Termination

In the event of contract termination other than as defined in attachment a.15 of this agreement the following will apply:

- Veolia will initiate delivery of all materials and services for which payment has been received in excess of the value of materials and services provided by Veolia at the time of cancelation.
- Buyer will, within 30 days, make a payment to Veolia equal to the value of materials and services provided to the point of termination, less the cumulative sum of payments paid by Buyer.
- Once terminated, there is no option to restart the agreement. No penalties or reimbursements, other than those outlined in this agreement, shall be paid by either party

## 9 Warranty on Programming

Veolia warrants that the PLC program will conform to the specifications in the relevant sections of the CLSC and OSC (revised for the project) and will be free from defects in workmanship when operated at all times in accordance with Veolia's written instructions. If any defects are found and reported by American Canyon within a period not exceeding twelve (12) months beyond the completion of the site acceptance test, Veolia will make modifications to the PLC code as deemed necessary. Any changes requested by American Canyon after this period will be at the customer's expense.

## 10 Purchase Order Guidelines

Please confirm that your purchase order has covered the following points. This will ensure accurate and prompt order entry, product delivery, invoicing and accounts receivables processing and will prevent administrative delays for all parties.

- **Documentation** – Our strong preference is to receive a hard or digital copy of your purchase order (PO) rather than a PO number alone. Your PO can be sent by email to [nam.service.pocentral@veolia.com](mailto:nam.service.pocentral@veolia.com). If you are not able to provide a PO, please contact us for alternatives.
- **Veolia legal entity** – Please be sure your purchase order is issued in the name of the specific Veolia legal entity outlined in the quote. We will be glad to work with your purchasing department to set this entity up as an approved supplier/vendor. Please advise us if this Veolia entity is not set up in your purchasing system as a vendor and you do have another Veolia entity set up.
- **Quotation Number** – Please reference the quotation number in your PO.
- **Product** – Please note which product(s) you wish to purchase along with the quoted price, particularly if quantities or scope differ from the quotation.
- **Taxes** – Please provide any required tax exemption certificates. Please indicate if taxes have been added in your PO.
- **Payment Terms** – Please acknowledge the payment terms included with the quotation.
- **Bill-to Address** – Please include contact information for your accounts payable.
- **Ship-to Address** – Please clearly define the delivery location and the receiver's email & telephone. Please specify receiving hours and any special off-loading requirements.
- **Delivery Date** – Please include your requested delivery date.

## B – General Terms and Conditions of Sale

The purchase of materials and service support included with this offer will be governed by the prevailing CITY OF AMERICAN CANYON AGREEMENT NO. 2024-59 – STANDARD AGREEMENT FOR INDEPENDENT CONTRACTOR SERVICES, executed between American Canyon and ZENON Environmental Corporation on May 8, 2024.



# 13 Signed Agreement

Through the issue of this proposal, Veolia signals their intent to enter into an agreement with American Canyon. American Canyon and Veolia acknowledge that they have read and understood this agreement and agree to be bound by the terms and conditions specified in it.

**Offered by** ZENON Environmental  
**Legal Entity:** Corporation, also known as Veolia or Seller  
3600 Horizon Blvd.,  
Trevose, PA, 19053

**Accepted by Legal Entity:** The City of American Canyon, also known as American Canyon or Buyer

**Authorized Signature by:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Signature Date:** \_\_\_\_\_

**Signature:** x \_\_\_\_\_

**Purchase Order No:** \_\_\_\_\_

**If options were available, which options selected** \_\_\_\_\_

Upon acceptance of this proposal, please forward the following either

- by email with .pdf attachments or • by postal mail.
- 1) this signature page completed to:
- 2) a hard copy of your purchase order, and
- 3) any required tax exemption certificates

[nam.service.pocentral@veolia.com](mailto:nam.service.pocentral@veolia.com)  
or  
Veolia Water Technologies & Solutions  
attention: Contracts Administrator  
Please contact  
[nam.service.pocentral@veolia.com](mailto:nam.service.pocentral@veolia.com)  
for correct address

This agreement comes into force when Veolia has issued a formal acceptance of American Canyon's Purchase order or formal acceptance of this American Canyon signed agreement.

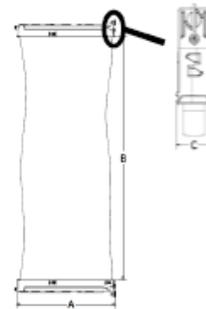
# Attachment A ZW500D RX12 Fact Sheet



## ZeeWeed\* 500D Module

### FACT SHEET

Module Dimensions				
Application	Product	Width (A) mm (in)	Header-to-Header Length (B) mm (in)	Depth (C) mm (in)
MBR	500D	844 (33.2)	1,940 (76.4)	49 (1.9)
Water	500D			52 (2.1)
		500Ds	1,577 (62.1)	52 (2.1)



Module Properties									
Application	Membrane Surface Area m <sup>2</sup> (ft <sup>2</sup> )	Max. Shipping Weight <sup>1</sup> kg (lb)	Lifting Weight <sup>2</sup> kg (lb)	Material	Nominal Pore Size (µm)	Fibre Diameter (mm)	Surface Properties	Fibre Tensile Strength (N)	Flow Path
MBR	40.0 (430)	28 (61)	28 – 75 (61 – 164)	PVDF	0.04	2.2	Non-ionic & Hydrophilic	> 600	Outside- In
Water	40.9 (440)	32 (70)	30 – 74 (66 – 163)			1.9			
	32.5 (350)	26 (57)	26 – 72 (57 – 159)			1.9			

<sup>1</sup> Packaged

<sup>2</sup> Varies with solids accumulation

Operating & Cleaning Specifications						
Application	TMP Range kPa (psig)	Max. Operating Temp. °C (°F)	Operating pH Range	Max. Cleaning Temp. °C (°F)	Cleaning pH Range	Max. Cl <sub>2</sub> Conc'n (ppm)
MBR	-55 to 55 (-8 to 8)	40 (104)	5.0-9.5	40 (104)	2.0 – 10.5 (<30°C)	1,000
Water	-90 to 90 (-13 to 13)				2.0 -10.0 (30-40°C)	

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**WATER TECHNOLOGIES**

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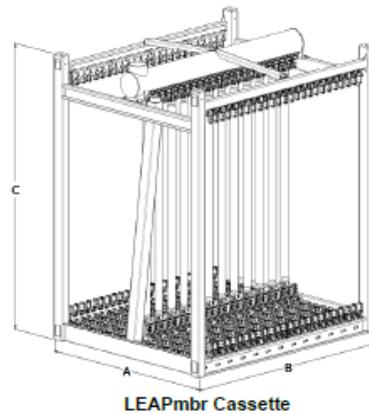
# Attachment B LEAPmbr 16M Cassette



## ZeeWeed\* 500D LEAP Cassette

### FACT SHEET

Cassette Dimensions			
Product	Width (A) mm (in)	Length (B) mm (in)	Height (C) mm (in)
16M	738 (29.1)	1,744 (68.7)	2,512 (98.9)



Cassette Tie-Points & Weights							
Application	Product	Max. # of ZW Modules	Min. # of ZW Modules	Permeate Connection	Air Connection	Max. Shipping Weight <sup>1</sup> kg (lb)	Lifting Weight <sup>2</sup> kg (lb)
LEAPmbr	16M	16	8	2 x 4" FNPT half couplings	1 x 3" FNPT half coupling	741 (1,634)	777 – 1,455 (1,713 – 3,208)

<sup>1</sup> Crated with maximum number of modules  
<sup>2</sup> Varies with number of modules and solids accumulation

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**WATER TECHNOLOGIES**

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## **TITLE**

City Council Code of Conduct and Governance Protocols

## **RECOMMENDATION**

Waive first reading and introduce by title only an ordinance modifying American Canyon Municipal Code Chapter 2.04.050 "Adoption of procedures." to establish a 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 draft versions of the document at your September 3 and October 1 meetings. Based on Council input, an updated version is included as Attachment 1, Ex. A.

The Code and 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.

The main document provides a summary of issues, while several lengthy and substantive appendices

issue by 3rd parties such as the FPPC, CalCities, etc. provide more detailed information.

Staff recommends adoption of the Ordinance shown in Attachment 1. Future changes to the Code and Protocol may occur by minute order, resolution or ordinance, depending upon the nature of the change.

Lastly, although Members will consider matters related to the former American Canyon County Water District ("Water District") from time to time, they will cease to receive additional compensation. The City Manager and City Attorney will bring a separate Ordinance for City Council review to implement this policy decision.

## **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. Ordinance](#)
- [2. Exhibit A - Code and Protocols with Appendices](#)

ORDINANCE NO. 2024 - \_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON REPEALING AND REPLACING AMERICAN CANYON MUNICIPAL CODE CHAPTER 2.04.050 AND ESTABLISHING A CITY COUNCIL CODE OF CONDUCT AND GOVERNANCE PROTOCOL**

**WHEREAS**, the City Council Code of Conduct and Governance Protocol (Code and Protocol) was first established in 2007 and most recently updated in 2021; and

**WHEREAS**, the Code and 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; and

**WHEREAS**, the Code and Protocol outlines expectations for ethical conduct, including integrity, impartiality, and adherence to legal and procedural norms; and

**WHEREAS**, the Code and Protocol outlines meeting procedures, decision-making processes, and public engagement strategies, aiming to enhance the efficiency and effectiveness of municipal operations

**WHEREAS**, the Code and Protocol maintains the public trust and promotes a collaborative and responsible approach to local government.

**NOW, THEREFORE THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1:** All prior versions of the City Council Code of Conduct and Governance Protocols are hereby rescinded and replaced with that certain City Council Code of Conduct and Governance Protocols - including Appendices A - H - attached hereto as Exhibit A.

**SECTION 2:** The City Council Code of Conduct and Governance Protocols may only be revised by ordinance, however any of the Appendices A – H may be revised by future City Council Minute Order or Resolution.

**SECTION 3:** The City Clerk, City Manager and City Attorney shall keep an updated copies of Council Code of Conduct and Governance Protocols - including Appendices A - H, and copies shall be distributed to new Council Members upon their election or appointment to City Council.

**SECTION 4:** All City Council Members shall acknowledge receipt of the Council Code of Conduct and Governance Protocols and agree to follow the Code of Conduct.

**SECTION 5:** American Canyon Municipal Code Chapter 2.04.050 shall be repealed and replaced by the following:

*2.04.050 Adoption of procedures.*

*The council shall follow the most current version of City Council Code of Conduct and Governance Protocols on file with the City Clerk to establish rules of procedure to govern the conduct of its meetings, any of its other functions and activities, and regulations pertaining thereto.*

*The City Council Code of Conduct and Governance Protocols may only be revised by ordinance, however any of the appendices created by 3<sup>rd</sup> parties may be updated with the latest information upon approval of a City Council Minute Order.*

**SECTION 6:** The Ordinance shall become effective 30 days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 15th day of October, 2024 by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

The foregoing Ordinance was adopted at a regular meeting of the City Council of the City of American Canyon, State of California, held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

\_\_\_\_\_  
Leon Garcia, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Taresa Geilfuss, CMC, City Clerk

\_\_\_\_\_  
William D. Ross, City Attorney



# 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.

As the American Canyon Fire Protection District Board is a separate and distinct legal entity, this governance protocol does not apply to the Fire District Board.

## 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 “Code and 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 adopted 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 completion 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 provide direction to the City Manager. The City Manager then determines the administrative functions of the City or the professional duties of City staff.
- 8) Independence of Boards, Commissions and Committees - City Council members will preserve the essential autonomy of boards, commissions, and committees in providing unbiased advice during the public decision-making process. 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 members of the public 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) Religious Invocations, Displays, and Attire. – The City Council acknowledges the City’s diverse religious and ethnic backgrounds and the importance of citizen’s rights to freedom of religion, while also recognizing constitutional limitations imposed by Federal and State laws on such expression in governmental settings.
  - a) Invocations, not in the form of prayer, are allowed at the beginning of Council Meetings to emphasize the seriousness of the occasion. An invocation cannot advance or disparage one religious faith over another, nor invoke one religious deity over another. Invocations *must* remain non-sectarian in content and may not proselytize or use language that may be interpreted as an attempt to convert. Prayer by a Council Member or the City Council during a Council Meeting is prohibited.
  - b) Religious displays are permitted on City property provided they are educational in nature and do not advance, nor disparage one religion over another.
  - c) City officials may wear religious attire associated with their beliefs but should be mindful of when such displays may trigger or encourage conduct that distracts from the purpose of governmental conduct.

- 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 prior to any conduct that may be inconsistent with this provision.
- 13) Incompatible Employment – City Council Members are prohibited from any private employment, or rendering 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 – *Ex-parte* communications are direct or indirect communications between a Member and a party/person regarding a matter before the Council, without giving all parties notice or the opportunity to participate. 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 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, aside from the City Attorney's office, 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 is directly supervised by the City Council and 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.



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 3<sup>rd</sup> 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 3<sup>rd</sup> 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, this prohibition includes a thumbs up response or emoji indicating agreement or disagreement.

Although Members may attend a purely social gathering or attend conferences or seminars, they must take care not 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 to 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 of 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 or 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 (1<sup>st</sup>) and third (3<sup>rd</sup>) 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 (5<sup>th</sup>) (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 four (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 and Voting. A minimum of three (3) affirmative votes is required for the City Council to act, there are exceptions where disqualifications may occur, in which case the City Attorney would advise as to how the Council can achieve the required number of Council members necessary to consider, advance, or approve a matter.

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 for 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 to 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. The Agenda Packet is distributed to the Members at the same time 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 implicates 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 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 advice of others can be insufficient justification for inappropriate participation.

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 are time-limited, typically 3 minutes.

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 existing specific facts or circumstances, and not those based on future or hypothetical facts or 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 3<sup>rd</sup> 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 is discouraged. In the event that offensive language or remarks cause a disturbance of the meeting, a warning to the disrupter will be given and if the disruption continues, all meeting attendees may be required to vacate the Council Chambers with the meeting proceeding after a recess without in-person public attendance.

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. Staff present Informational reports 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

City Council Members receive a variety of forms of compensation more particularly described in the appendix.

Salary. City Council Members receive a salary as stipulated by State law which may be adjusted from time to time by the Legislature.

Cost of Living Increase. Beginning January 2026 and annually 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 received by City employees in the General Bargaining Unit. Any cost-of-living increase must be approved by the City Council, with this typically occurring the prior June of each year in conjunction with the annual budget process.

Payment Schedule. City Council Members are paid on the same schedule as employees.

Additional Payment. City Council Members sit *de facto* 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 Benefit. City Council Members are eligible for retirement benefits.

Medical Benefit. City Council Members are eligible for medical benefits. 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 dental and vision care benefits.

Deferred Compensation. City Council Members are eligible to participate in the City's Section 457 Deferred Compensation program.

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

Stipends. City Council Members are eligible to receive various stipends available to employees.

## 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. This subsection does not apply to requests for information made to the City Attorney's office.

**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”)<sup>1</sup> 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<sup>2</sup> 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.<sup>3</sup> 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's 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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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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<sup>1</sup>

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### 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)<sup>2</sup> 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.)<sup>1</sup>

- 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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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>1</sup>

- 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



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## Reference Pamphlet

### **California Fair Political Practices Commission**

1102 Q Street, Suite 3050 • Sacramento, CA 95811

Email advice: [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)

Toll-free advice line: 1 (866) ASK-FPPC • (866) 275-3772

Telephone: (916) 322-5660 • Website: [www.fppc.ca.gov](http://www.fppc.ca.gov)

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# Who Must File

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## 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

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## 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](http://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
<b>87200 Filers</b>	
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
<b>87200 Candidates</b>	
State offices	County elections official with whom you file your declaration of candidacy
Judicial offices	
Multi-County offices	
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	<b>30 days</b> after assuming office
Appointed positions specified in Gov. Code Section 87200  <b>or</b> Members of newly created boards and commissions not covered by a conflict of interest code	<b>30 days</b> after assuming office  <b>or</b> <b>10 days</b> 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	<b>30 days</b> 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	<b>30 days</b> 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)

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### 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

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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)

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**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](mailto:Form700@fppc.ca.gov). Do not mail the FPPC a copy of a Form 700 with a digital signature affixed.

## Terms & Definitions - (continued)

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**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)

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### 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](http://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

## Terms & Definitions - (continued)

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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 not 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

## Terms & Definitions - (continued)

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)

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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](http://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

## Terms & Definitions - (continued)

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)

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**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.<sup>1</sup> The ethics training requirement may also apply to agency employees designated by the agency's legislative body.<sup>2</sup>

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](http://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.<sup>3</sup>

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](http://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." <sup>4</sup>The advantage can be a future one and need not involve the payment of money.<sup>5</sup>
- **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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

*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:<sup>11</sup>

- 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<sup>12</sup> or with whom the agency contracts (except for bank or credit card indebtedness made in the regular course of the company’s business).<sup>13</sup> Personal loans over \$500 from others must meet certain requirements (for example, be in writing, clearly state the date, amounts and interest payable).<sup>14</sup>
- **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).<sup>15</sup> 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.<sup>16</sup>
- **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.<sup>17</sup> The penalty for violating the prohibition against accepting travel passes from transportation companies is severe--an immediate forfeiture of office.<sup>18</sup>
- **Receiving Gratuities or Rewards.** It is a crime to receive any kind of gratuity or reward for performing one’s duties.<sup>19</sup>
- **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.<sup>20</sup> 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.<sup>21</sup> “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.<sup>22</sup> 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.<sup>23</sup>
- **Expense Reimbursement.** The general rule is that local agency officials may only be reimbursed for actual and necessary expenses.<sup>24</sup> 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.<sup>25</sup> Local agencies must use expense report forms and all expenses must be documented with receipts.<sup>26</sup> These documents are public records subject to disclosure.<sup>27</sup>
- **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.<sup>28</sup> As protectors of the public purse, courts generally take a strict approach to public official compensation limits.<sup>29</sup>

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<sup>30</sup>

Agencies may compensate officials for attendance at other events as specified in a written policy adopted in a public meeting.<sup>31</sup>

- **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.<sup>32</sup> The prohibition applies to campaigns to elect candidates and campaigns in support of or opposition to ballot measures.
- **Mass Mailings at Public Expense.** State law forbids sending mass mailings at public expense.<sup>33</sup> 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.<sup>34</sup>
- **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.<sup>35</sup> It can also be an issue when a public agency contemplates charitable contributions.<sup>36</sup>

- **Soliciting Political Support from Agency Employees.** Soliciting campaign funds from agency officers or employees is also unlawful,<sup>37</sup> as is conditioning employment decisions on support of a person's candidacy.<sup>38</sup> Compensation decisions may not be tied to political support.<sup>39</sup>
- 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.<sup>40</sup> Criminal penalties include a two to four year prison term and disqualification from office.<sup>41</sup> Prosecution under the federal income tax evasion laws is also a possibility.<sup>42</sup> 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.<sup>43</sup>

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](http://www.ca-ilg.org/ethicslaws). For more information on ethics principles, please visit [www.ca-ilg.org/ethicsprinciples](http://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

- <sup>1</sup> Cal. Gov't Code § 53235(a), (b).
- <sup>2</sup> Cal. Gov't Code § 53234(c).
- <sup>3</sup> Cal. Gov't Code § 53235(a), (b).
- <sup>4</sup> Cal. Penal Code § 7
- <sup>5</sup> Id. See also *People v. Anderson*, 75 Cal. App. 365 (1925).
- <sup>6</sup> See Cal. Gov't Code §§ 87100 and following.
- <sup>7</sup> Cal. Gov't Code § 1090.
- <sup>8</sup> Cal. Gov't Code § 1092. *Thomson v. Call*, 38 Cal. 3d 633, 646 (1985)
- <sup>9</sup> Cal. Gov't Code § 87407.
- <sup>10</sup> See Cal. Gov't Code §87406.3.
- <sup>11</sup> See Cal. Gov't Code § 87105.
- <sup>12</sup> See Cal. Gov't Code § 87460(a), (b).
- <sup>13</sup> See Cal. Gov't Code § 87460(c), (d).
- <sup>14</sup> See Cal. Gov't Code § 87461.
- <sup>15</sup> 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)
- <sup>16</sup> Cal. Gov't Code § 82028(a).
- <sup>17</sup> See Cal. Const. art. XII, § 7 (“A transportation company may not grant free passes or discounts to anyone holding an office in this State . . .”).
- <sup>18</sup> See Cal. Const. art. XII, § 7 (“ . . . acceptance of a pass or discount by a public officer . . . shall work a forfeiture of that office . . .”).
- <sup>19</sup> Cal. Penal Code § 70.
- <sup>20</sup> See Cal. Gov't Code § 89501 (definition of honoraria).
- <sup>21</sup> See Cal. Penal Code § 424; Cal. Gov't Code § 8314.
- <sup>22</sup> Cal. Gov't Code § 8314(b)(1).
- <sup>23</sup> Cal. Gov't Code § 8314(b)(4).

<sup>24</sup> Cal. Gov't Code § 36514.5.

<sup>25</sup> Cal. Gov't Code § 53232.2(b).

<sup>26</sup> Cal. Gov't Code § 53232.3.

<sup>27</sup> Cal. Gov't Code § 53232.3(e).

<sup>28</sup> 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).

<sup>29</sup> *Id.*

<sup>30</sup> Cal. Gov't Code § 53232.1(a).

<sup>31</sup> Cal. Gov't Code § 53232.1(b).

<sup>32</sup> 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.").

<sup>33</sup> See Cal. Gov't Code § 89001.

<sup>34</sup> See Cal. Gov't Code 89002

<sup>35</sup> 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).

<sup>36</sup> 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.")

<sup>37</sup> 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).

<sup>38</sup> 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.

<sup>39</sup> ??

<sup>40</sup> Cal. Gov't Code § 8314(c)(1).

<sup>41</sup> Cal. Penal Code § 424.

<sup>42</sup> See 26 U.S.C. §§ 7201, 7203.

<sup>43</sup> 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.<sup>1</sup> The ethics training requirement may also apply to agency employees designated by the agency's legislative body.<sup>2</sup>

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](http://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:<sup>3</sup>

- 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](http://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.<sup>4</sup>

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:<sup>5</sup>

- 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](http://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.<sup>6</sup> 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.<sup>7</sup> 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<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>
- **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.<sup>12</sup>
- **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.<sup>13</sup> Nor is attendance at a social or ceremonial event in and of itself a violation.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>
- **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.<sup>17</sup> 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.<sup>18</sup>

- **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.<sup>19</sup>

## 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.<sup>20</sup> The public has the right to see any materials that are created as part of the conduct of the people's business.<sup>21</sup> These materials include any writing that was prepared, owned, used or retained by a public agency.<sup>22</sup> They include documents, computer data, e-mails, facsimiles and photographs.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup>

Typically, having the official who may have exhibited bias disqualify himself or herself solves the problem.<sup>26</sup> If the problem is not addressed though, the agency's decision will be at risk of being overturned by the courts.<sup>27</sup> The agency will have to conduct new proceedings free of the influence of the biased decision-maker.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

## 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.<sup>31</sup> The restrictions apply if the official is sitting on an appointed (as opposed to elected) body.<sup>32</sup>

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.<sup>33</sup>

## 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.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup>

Many competitive bidding requirements are locally imposed, for example, by charter cities as part of their municipal affairs authority.<sup>37</sup> State law also authorizes local agencies to adopt procedures for acquisition of supplies and equipment.<sup>38</sup> 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.<sup>39</sup> 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).<sup>40</sup> Note that it is a misdemeanor to split projects to avoid competitive bidding requirements.<sup>41</sup>

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.<sup>42</sup> 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.<sup>43</sup> "Immediate family" includes one's spouse or domestic partner and dependent children.<sup>44</sup> 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.<sup>45</sup>
- **Right-versus-Right Ethical Dilemmas.** This type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values.<sup>46</sup>

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](http://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](http://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

- <sup>1</sup> Cal. Gov't Code § 53235(a), (b).
- <sup>2</sup> Cal. Gov't Code § 53234(c).
- <sup>3</sup> Cal. Gov't Code § 53234(d)(3), (4).
- <sup>4</sup> This is a requirement of the Political Reform Act. *See generally* Cal. Gov't Code §§ 87200 and following.
- <sup>5</sup> *See* Cal. Gov't Code §§ 87200-87210; 2 Cal. Code Regs. §§ 18723-18740.
- <sup>6</sup> *See generally* Cal. Gov't Code §§ 84100 and following; 2 Cal. Code Regs. §§ 18401 and following.
- <sup>7</sup> *See* Cal. Gov't Code § 82015(b)(2)(B)(iii).
- <sup>8</sup> *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).
- <sup>9</sup> *See* Cal. Gov't Code 54952.2(a); Cal. Gov't Code § 54954.2(a).
- <sup>10</sup> Cal. Gov't Code § 54952.2(a).
- <sup>11</sup> Cal. Gov't Code § 54952.2(b); Cal. Educ. Code § 72121.
- <sup>12</sup> Cal. Gov't Code § 54952.2.
- <sup>13</sup> Cal. Gov't Code § 54952.2(c)(2).
- <sup>14</sup> Cal. Gov't Code § 54952.2(c)(5).
- <sup>15</sup> *See* Cal. Gov't Code § 54954.5; Cal. Educ. Code § 71122.
- <sup>16</sup> Cal. Gov't Code § 54954.2(a); Cal. Educ. Code § 72121.
- <sup>17</sup> Cal. Gov't Code § 54954.3(a); Cal. Educ. Code § 72121.5.
- <sup>18</sup> Cal. Gov't Code § 54954.3(a).
- <sup>19</sup> Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).
- <sup>20</sup> Cal. Gov't Code § 54957.5.
- <sup>21</sup> *See generally* Cal. Gov't Code §§ 6250 and following.
- <sup>22</sup> Cal. Gov't Code § 6252(d).
- <sup>23</sup> Cal. Gov't Code § 6252(e).
- <sup>24</sup> *City of San Jose vs. Superior Court of the County of Santa Clara*, 2 Cal. 5<sup>th</sup> 608 (2017)
- <sup>25</sup> *Nasha v. City of Los Angeles*, 125 Cal. App. 4th 471 (2004).
- <sup>26</sup> *See Fairfield v. Superior Court*, 14 Cal. 3d 768 (1975); *Mennig v. City Council*, 86 Cal. App. 3d 341 (1978).
- <sup>27</sup> *See generally* Cal. Civ. Proc. Code § 1094.5.
- <sup>28</sup> *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).
- <sup>29</sup> *See* 42 U.S.C. §§ 1983, 1988.
- <sup>30</sup> *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.
- <sup>31</sup> Cal. Gov't Code § 84308.
- <sup>32</sup> *See* Cal. Gov't Code § 84308(a)(3); 2 Cal. Code Regs. § 18438.1.
- <sup>33</sup> *See* Cal. Gov't Code § 84308(b).
- <sup>34</sup> *See* Cal. Gov't Code § 1126.
- <sup>35</sup> *People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636, 641-642 (1940)
- <sup>36</sup> *See* Cal. Pub. Cont. Code § 100.
- <sup>37</sup> *Smith v. City of Riverside*, 34 Cal. App. 3d 529 (1973).
- <sup>38</sup> Cal. Gov't Code §§ 54201 and following.
- <sup>39</sup> Cal. Pub. Cont. Code §§ 20160-20162.
- <sup>40</sup> Cal. Pub. Cont. Code §§ 20120-20123.
- <sup>41</sup> Cal. Pub. Cont. Code § 20163.

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<sup>42</sup> See, e.g., Cal. Pub. Cont. Code § 20164.

<sup>43</sup> See 2 Cal. Code Regs. § 18703.5.

<sup>44</sup> Cal. Gov't Code § 82029; 2 Cal. Code Regs. § 18229.

<sup>45</sup> See Rushworth M. Kidder, *Moral Courage: Taking Action When Your Values Are Put to the Test* (William Morrow, 2005).

<sup>46</sup> 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



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# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT  
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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

Two key parts of the Brown Act have not changed since its adoption in 1953. One is the 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."<sup>1</sup>*

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."<sup>2</sup>*

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."<sup>3</sup>*

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.

**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.

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.<sup>4</sup>

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.<sup>5</sup>

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.

### 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.

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**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.

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## 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.<sup>6</sup> 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.

### 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.

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**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.

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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://leginfo.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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What is not a “legislative body” for purposes of the Brown Act? ..... 14

# 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.<sup>1</sup>*



### 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.”<sup>2</sup> 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.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.<sup>6</sup>

- **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.<sup>7</sup> Thus, meetings between incumbents and newly elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

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

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

**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.

- **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.<sup>8</sup>
- **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.<sup>9</sup> 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.<sup>10</sup> “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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> These include some nonprofit corporations created by local agencies.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

**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.<sup>17</sup>

### 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.<sup>18</sup> 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.<sup>19</sup>
- 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.<sup>20</sup>

- 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.<sup>21</sup>
- 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.<sup>22</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>23</sup>

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.<sup>24</sup>

## ENDNOTES

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.
- 2 Cal. Gov. Code, § 54952, subs. (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).



# Chapter 3

## MEETINGS

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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.”<sup>1</sup> 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.<sup>2</sup>

### 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.<sup>3</sup>
- **“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.<sup>4</sup>
- **“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.<sup>5</sup>
- **“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.<sup>6</sup>

### Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:<sup>7</sup>

#### *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.<sup>8</sup> 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).<sup>9</sup>

**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.<sup>10</sup> 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.<sup>11</sup>



- 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.”<sup>12</sup> The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D, and so on until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, 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.<sup>13</sup> 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.”<sup>14</sup>

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



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

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.<sup>15</sup>

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

**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.”<sup>18</sup> 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.”**

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

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*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.<sup>19</sup>

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.<sup>20</sup> 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

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.<sup>21</sup> 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.”<sup>22</sup> 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:<sup>23</sup>

- 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.



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

**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.<sup>24</sup>

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.<sup>25</sup>

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:<sup>26</sup>

- 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.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> State law has also allowed for virtual meetings under certain emergency situations.<sup>31</sup>

## 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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

- 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

**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.<sup>12</sup> 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.<sup>13</sup>



### 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).<sup>14</sup>

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.<sup>15</sup>

### 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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup>

## Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>19</sup> 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.<sup>20</sup>

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.<sup>21</sup> However, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>22</sup> 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.<sup>23</sup>

## 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.<sup>24</sup> 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 XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a



mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>25</sup> 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:<sup>26</sup>

- 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.

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:*

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

- 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.<sup>27</sup> 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.<sup>28</sup>

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

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.<sup>31</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>32</sup>

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.<sup>33</sup>

**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.<sup>34</sup> Ejection is justified only when audience members actually disrupt the proceedings,<sup>35</sup> 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).<sup>36</sup> 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.<sup>37</sup>

## 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.<sup>38</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>39</sup>

- 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.<sup>40</sup> 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.<sup>41</sup>

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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup> The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.<sup>45</sup>

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.<sup>46</sup>

**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.

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.<sup>47</sup>

### 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.<sup>48</sup>

- 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.<sup>49</sup> However, this prohibition does not provide immunity for defamatory statements.<sup>50</sup>

- 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.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup>

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.<sup>54</sup>

## 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. XIII C, XIII D; 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.<sup>1</sup>



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.<sup>2</sup> 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.<sup>3</sup>

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),<sup>4</sup> 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.<sup>5</sup> 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

**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.

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.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> The legislative body must take public comment on the closed session item before convening in a closed session.

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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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**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.

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The California Attorney General has opined that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>17</sup> 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.<sup>18</sup>

### 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.<sup>19</sup>

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.<sup>20</sup>

### 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.<sup>21</sup> 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.<sup>22</sup>



### **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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup>

**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,<sup>26</sup> and the names of the parties with whom its negotiator may negotiate.<sup>27</sup>

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.<sup>28</sup>

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

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,<sup>33</sup> 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.<sup>34</sup> The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>35</sup> If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.<sup>36</sup>

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.<sup>37</sup>

- 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>41</sup>

**“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.*

## 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,<sup>42</sup> 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.<sup>43</sup>

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

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**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.<sup>44</sup>

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.<sup>45</sup> 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.<sup>46</sup>

Public participation under the Rodda Act also takes another form.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>51</sup>

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

## Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.<sup>52</sup>

## 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.<sup>53</sup>

## 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.<sup>54</sup> 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.<sup>55</sup>

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.<sup>56</sup>

## 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:<sup>57</sup>

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.<sup>58</sup>

### 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,<sup>59</sup> consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,<sup>60</sup> hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medical services,<sup>61</sup> 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,<sup>62</sup> 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.<sup>63</sup>

**PRACTICE TIP:** Meetings are either open or closed. There is nothing “in between.”<sup>64</sup>

### 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.<sup>65</sup>

**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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup>

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,<sup>69</sup> though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.<sup>70</sup> 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.<sup>71</sup>

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.<sup>72</sup>

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.<sup>73</sup> The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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

## ENDNOTES

- 1 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 *Duwall 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.



# Chapter 6

## REMEDIES

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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.<sup>1</sup> 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.<sup>2</sup>
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.<sup>3</sup>
- 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.<sup>4</sup>
- Those connected with the collection of any tax.<sup>5</sup>
- 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.<sup>6</sup>

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.<sup>7</sup> The legislative body then has up to 30 days to cure and correct its action.<sup>8</sup> 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.<sup>9</sup>

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

### 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.<sup>13</sup> 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.<sup>14</sup> The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.<sup>15</sup> 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.<sup>16</sup>

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

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.<sup>21</sup>

### 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.<sup>22</sup>

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**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.

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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.<sup>23</sup> A court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

### 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.<sup>27</sup> 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.<sup>28</sup>

### 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.<sup>29</sup>

"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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup>

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

## 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.

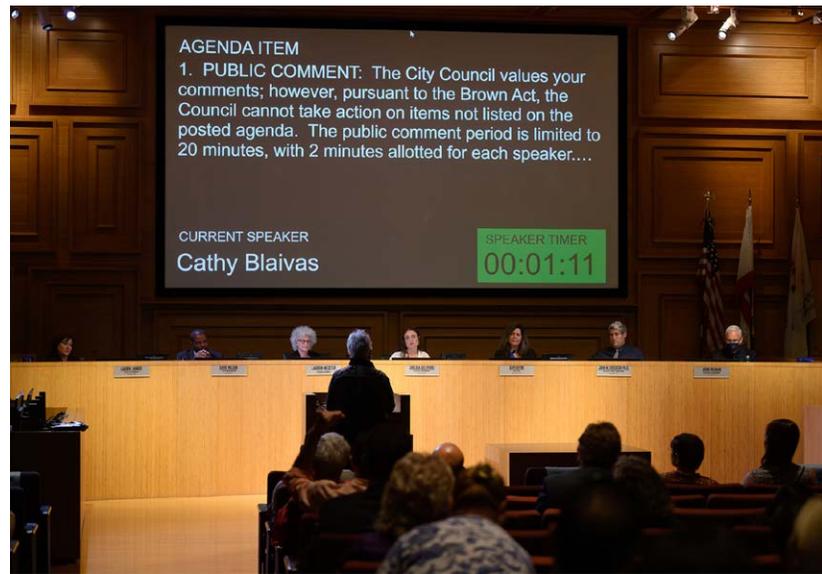


Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

## 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, subs. (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, subs. (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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Law Offices of  
**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

**FROM:** William D. Ross, City Attorney      **CC:** Jason B. Holley, City Manager  
David Schwarz, Deputy City Attorney      Maria Ojeda, Assistant City Manager  
Taresa Geilfuss, City Clerk

**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)).<sup>1</sup>

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;

---

<sup>1</sup> 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.<sup>2</sup>

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.

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<sup>2</sup> 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.

City of American Canyon Legislative  
and Advisory Bodies  
March 6, 2023  
Page 6

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:

<b>“Just Cause”</b>	<b>“Emergency Circumstances”</b>
<p><i>Timing and Procedure</i></p> <p>The member <u>notifies</u> 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.</p> <p><i>Qualifying Reason</i></p> <p>“Just cause” means any of the following:</p> <ul style="list-style-type: none"> <li>• A childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely</li> <li>• A contagious illness that prevents a member from attending in person</li> <li>• A need related to a physical or mental disability not otherwise accommodated for</li> <li>• Travel while on official business of the legislative body or another state or local agency</li> </ul> <p>Note: A member is limited to two virtual attendances based on “just cause” per calendar year.</p>	<p><i>Timing and Procedure</i></p> <p>The member <u>requests</u> 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.</p> <p><i>and</i></p> <p>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.</p> <p><i>Qualifying Reason</i></p> <p>“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).</p> <p>Note: The member must make a separate request for each meeting in which they seek to participate remotely.</p>

### **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*

# ACKNOWLEDGEMENTS

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# THE PEOPLE'S BUSINESS:

## A GUIDE TO THE PUBLIC RECORDS ACT



**CH. 1: INTRODUCTION AND OVERVIEW**

**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:  
A GUIDE TO THE CALIFORNIA PUBLIC RECORDS ACT**



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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	California School Boards Association
California Association of Sanitation Agencies	California Special Districts Association
California Attorney General's Office	California State Association of Counties
California Common Cause	Californians Aware
California District Attorneys Association	City Clerks Association of California
California First Amendment Coalition	Community College League of California
California Newspaper Publishers Association	First Amendment Project
California Redevelopment Association	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](http://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](http://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

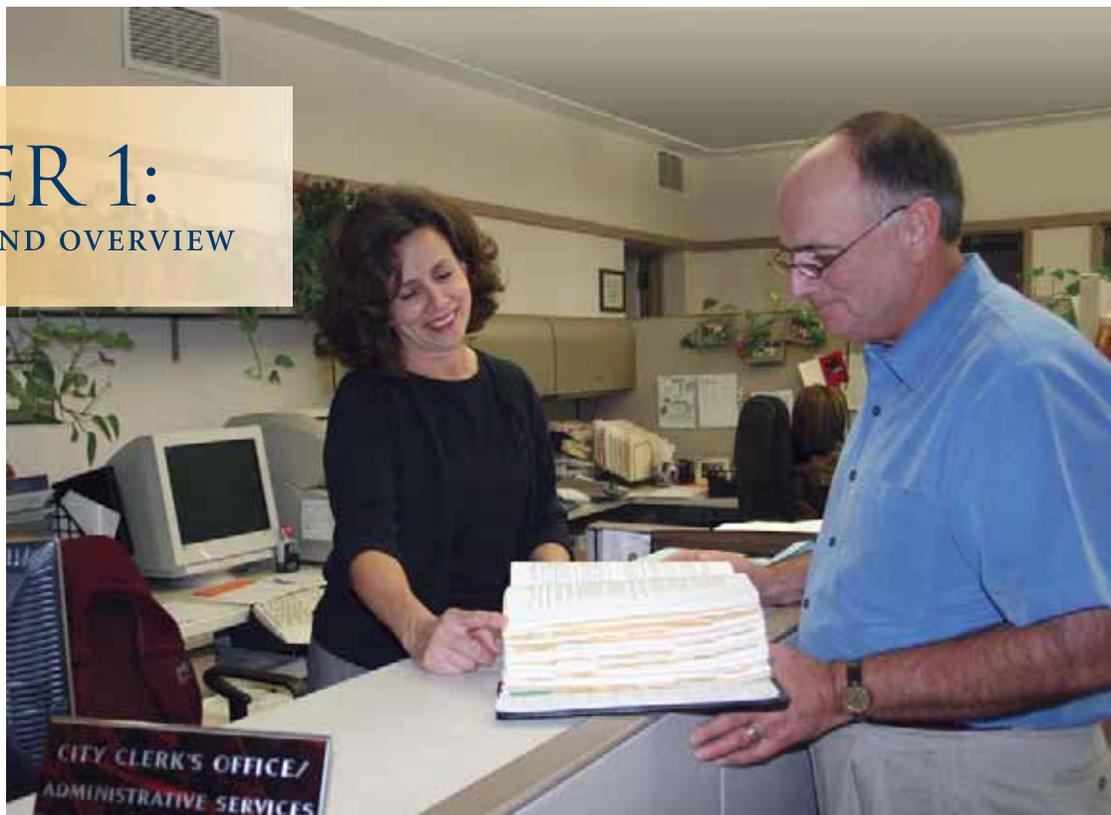
ACHIEVING BALANCE

PROPOSITION 59

BEYOND THE LAW

# CHAPTER 1:

## INTRODUCTION AND OVERVIEW



### ■ FUNDAMENTAL RIGHT OF ACCESS TO INFORMATION

**The California Public Records Act**<sup>1</sup> (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.<sup>2</sup> 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.

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.”<sup>3</sup>

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.”<sup>4</sup>

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.<sup>5</sup>

#### **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.

## ■ 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

## ■ 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."<sup>11</sup> The Act balances these competing interests by preserving an "island of privacy upon the broad sea of enforced disclosure."<sup>12</sup> For the past forty years, courts have also balanced these competing interests in deciding whether to order disclosure of records.<sup>13</sup> 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."<sup>14</sup>

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."<sup>15</sup> 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.”<sup>16</sup> 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.<sup>17</sup>

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.”<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>



The Act does not apply to the Legislature or the judicial branch.<sup>4</sup> The Legislative Open Records Act covers the Legislature.<sup>5</sup> Most court records are disclosable as a matter of public right of access to courts under the First Amendment of the United States Constitution.<sup>6</sup>

### ■ 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.”<sup>7</sup> 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.”<sup>8</sup>

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.”<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>



### ■ 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.<sup>13</sup> “Persons” include corporations, partnerships, limited liability companies, firms or associations.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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### 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



TYPES OF REQUESTS  
FORM OF THE REQUEST  
CONTENT OF THE REQUEST  
THE DUTY TO RESPOND  
TIMING OF THE RESPONSE  
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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.

A requester may inspect public records during the local agency’s regular office hours.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

#### ***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.

## ■ FORM OF THE REQUEST

A public records request may be made in writing or orally, in person or by phone.<sup>8</sup> 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.

## ■ CONTENT OF THE REQUEST

A public records request must reasonably describe an identifiable record or records.<sup>9</sup> It must be focused and specific<sup>10</sup> and clear enough so that the agency can decipher what record or records are being sought.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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.<sup>14</sup> A requester does not have to justify or explain the reason for exercising a fundamental right.<sup>15</sup>

## ■ 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.<sup>16</sup>

## ■ 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.<sup>17</sup> 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.<sup>18</sup> If the tenth day falls on a weekend or holiday, the next business day is considered the deadline for responding to the request.<sup>19</sup> 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.<sup>20</sup>

## ■ 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;

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### **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.

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### **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.

### 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.<sup>21</sup>

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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

Alternatively, the local agency may satisfy its duty to assist the requester if it gives the requester an index of records.<sup>25</sup> Ordinarily an inquiry into a requester's purpose in seeking access to a public record is inappropriate,<sup>26</sup> but such an inquiry may be proper if it will help assist the requester in making a focused request that reasonably describes identifiable records.<sup>27</sup>

### ■ LOCATING RECORDS

A local agency must make a reasonable effort to search for and locate the record or records that have been requested.<sup>28</sup> 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.<sup>29</sup> Nor is it compelled to undergo a search that will produce a "huge volume" of material in response to the request.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>



## ■ 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,<sup>33</sup> unless the burden of redacting the record becomes too great.<sup>34</sup> 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.<sup>35</sup>

## ■ 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.<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup>

## ■ 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.<sup>40</sup> 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.<sup>41</sup> 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.”<sup>42</sup> 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,”<sup>43</sup> which signals the importance of promptly disclosing records to the requester.

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### **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.

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### **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.

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**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.<sup>44</sup> 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.



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**■ FEES**

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,<sup>45</sup> or it may charge a statutory fee, if applicable.<sup>46</sup> Direct costs of duplication include costs of reproduction, and conceivably the cost of staff time expended in making a copy of the record.<sup>47</sup> An agency may require payment in advance before providing the requested copies;<sup>48</sup> 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.<sup>49</sup> 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.

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**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.

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## 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

Attorney Client Communications  
and Attorney Work Product

Code Enforcement Records

Drafts

Election Information

Identity of Informants

Law Enforcement Records

Library Circulation Records

Licensee Financial Information

Medical Privacy Laws

Official Information Privilege

Pending Litigation or Claims

Personal Contact Information

Personnel Records

Public Contracting Documents

Real Estate Appraisals and Engineering Evaluations

Recipients of Public Services

Taxpayer Information

Trade Secrets and Other Proprietary Information

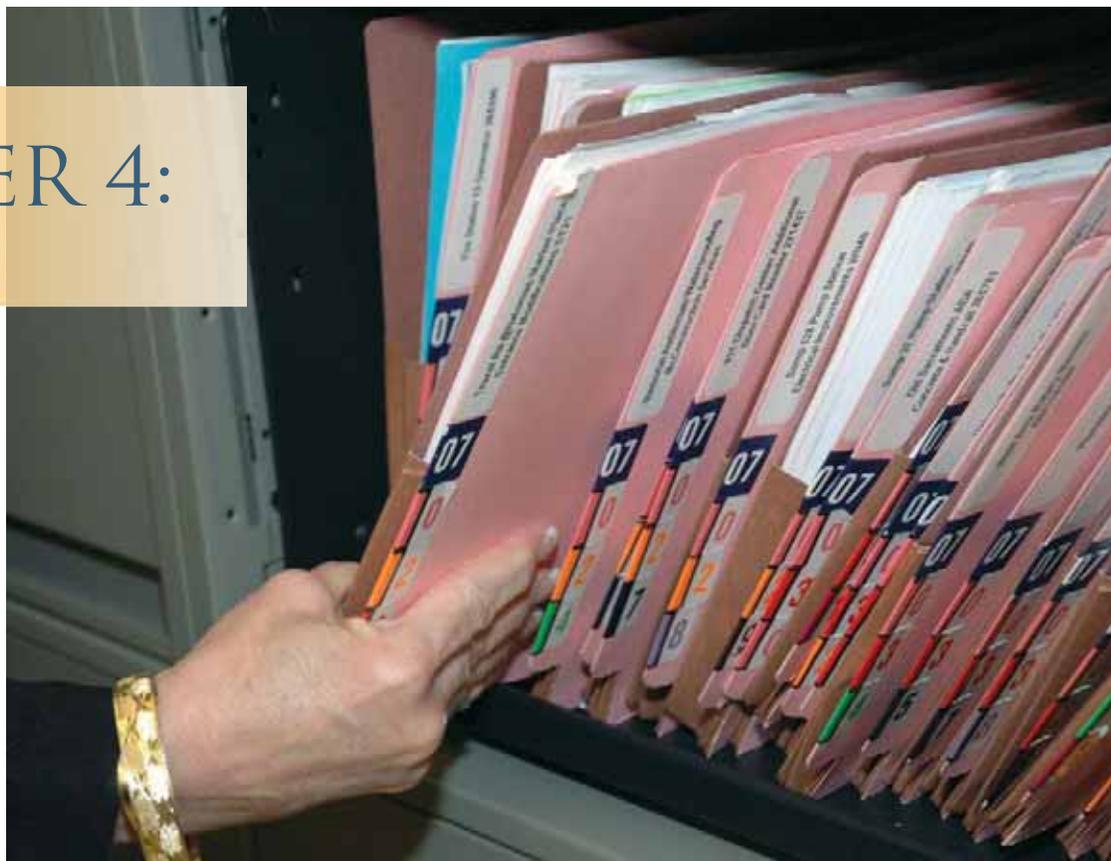
Utility Customer Information

#### 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

#### **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.<sup>5</sup>

## ■ SPECIFIC EXEMPTIONS

### *Architectural and Official Building Plans*

Certain of the materials submitted by third parties to local agencies may qualify for federal copyright protection.<sup>6</sup> 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....”<sup>7</sup> 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.”<sup>8</sup> The law includes architectural plans as “original works of authorship” which have an automatic federal copyright protection.<sup>9</sup> 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.<sup>10</sup>

State law addresses inspection and duplication of building plans and authorizes inspection of the plans by the public.<sup>11</sup> 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.<sup>12</sup> After receiving this required information, the professional cannot unreasonably withhold written permission to make copies of the plans.<sup>13</sup>

Additionally, the California Attorney General has determined that interim grading documents, including geology, compaction, and soils reports are public records.<sup>14</sup>

### *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.”<sup>15</sup> 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.<sup>16</sup>

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.<sup>17</sup> Similarly, retainer agreements between a local agency and its attorneys may constitute confidential communications that fall within the attorney client privilege.<sup>18</sup> A local agency may waive the privilege and elect to produce the agreements.<sup>19</sup> Only the local agency’s governing board may waive the privilege.<sup>20</sup>



#### **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.

## 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.<sup>21</sup> Records of code enforcement cases being prosecuted administratively do not qualify as law enforcement records.<sup>22</sup> 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.<sup>23</sup>

## 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.”<sup>24</sup> 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.”<sup>25</sup> 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.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

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.<sup>31</sup> 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.

### Practice Tip:

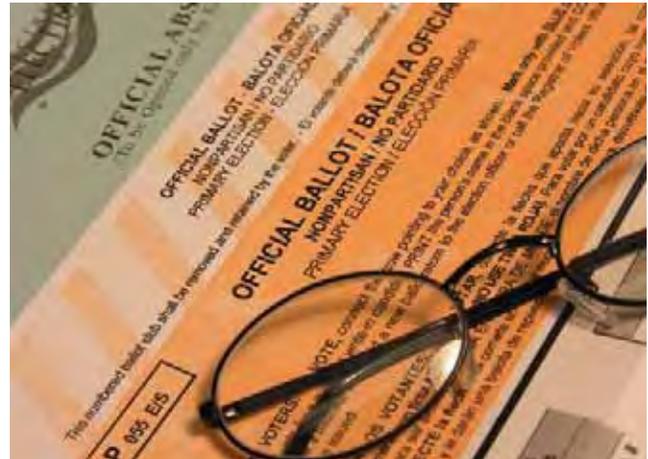
By adopting written policies or developing consistent practices of discarding preliminary deliberative writings, local agencies may facilitate candid internal policy debate. Such policies and practices may exempt from disclosure even preliminary drafts that have not yet been discarded, so long as the 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.

## *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.<sup>32</sup> 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.<sup>33</sup>

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).<sup>34</sup>



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.<sup>35</sup>

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.<sup>36</sup>

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.<sup>37</sup>

### **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.<sup>38</sup>

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.<sup>39</sup>

## *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.<sup>40</sup> 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.<sup>41</sup>



## **Law Enforcement Records**

### **Overview**

Law enforcement records are generally exempt from disclosure except for certain specific types of information that must be disclosed.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> Those portions of any file that reflect the analysis and conclusions of the investigating officers may also be withheld.<sup>45</sup> 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.<sup>46</sup>

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<sup>47</sup> and booking photos, although this is not required under the Act.<sup>48</sup>

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.

### **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.<sup>49</sup>

### **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.

### **Practice Tip:**

Many departments that choose not to release entire reports develop a form that can be filled out with the requisite public information.

### *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.<sup>50</sup>

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).<sup>51</sup>

### *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.<sup>53</sup>



### *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.<sup>52</sup>

### **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.<sup>54</sup> 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.<sup>55</sup>

- 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.<sup>56</sup>

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.<sup>57</sup>

### 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.<sup>58</sup> 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.<sup>59</sup>

### 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.<sup>60</sup> Willful, knowing release of confidential mental health detention information can create liability for civil damages.<sup>61</sup>

### 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.<sup>62</sup> 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.<sup>63</sup> Unauthorized disclosure of suspected elder abuse or neglect information is a misdemeanor.<sup>64</sup>

### 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.<sup>65</sup> Juvenile court case files are subject to inspection only by specific listed persons and are governed by both statute and state court rules.<sup>66</sup>

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.<sup>67</sup> A law enforcement agency shall release the name of and descriptive information relating to any juvenile who has escaped from a secure detention facility.<sup>68</sup>

### **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.

### **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.

### *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.<sup>69</sup> Unauthorized disclosure of confidential child abuse or neglect information is a misdemeanor.<sup>70</sup>

### *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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup>



### *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.<sup>74</sup> 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.<sup>75</sup>

### *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.<sup>76</sup> The exemptions from and prohibitions against disclosure contained in these laws are incorporated into the Act.<sup>77</sup>

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.<sup>78</sup>

### **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.<sup>79</sup> 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.<sup>80</sup> Patient information in the possession of a local agency may be subject to the privilege.

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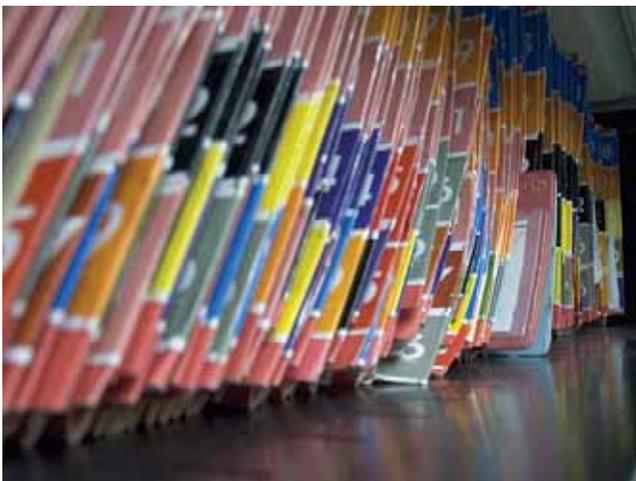
**Practice Tip:**

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.

**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.<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup> 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.<sup>85</sup> Persons and entities that negligently disclose records protected under state law may be liable for administrative fines or civil penalties.<sup>86</sup> Knowingly and willfully obtaining, using, or disclosing information protected under state law is subject to substantial administrative fines or civil penalties.<sup>87</sup>

**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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> Federal law also permits the Health and Human Services Secretary to impose civil penalties.<sup>91</sup>

**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."<sup>92</sup> The Act further prohibits the disclosure of records otherwise exempt or prohibited from disclosure pursuant to federal and state law.<sup>93</sup>

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.<sup>94</sup> "[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.”<sup>95</sup> 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;<sup>96</sup> however, some of the personal information may still be protected under the Act.<sup>97</sup> 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.<sup>98</sup>



### ***Official Information Privilege***

A local agency has a privilege to refuse to disclose official information.<sup>99</sup> “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.<sup>100</sup>

The local agency has the right to assert the privilege both to refuse to disclose and to prevent another from disclosing official information.<sup>101</sup> 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.)<sup>102</sup> This is typically done through confidential judicial review.<sup>103</sup> 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.<sup>104</sup>

There are a number of cases arising out of this statute.<sup>105</sup> 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.”<sup>106</sup> 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.<sup>107</sup> 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.”<sup>108</sup> 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.<sup>109</sup>

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.<sup>110</sup>

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.<sup>111</sup>

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.<sup>112</sup>

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.<sup>113</sup> 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.<sup>114</sup>

While medical records are subject to a constitutional right of privacy, and generally exempt from production under the Act and other statutes,<sup>115</sup> 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.<sup>116</sup> Similarly, investigative reports in claims involving law enforcement activity may fall within specific exemptions for law enforcement reports<sup>117</sup> or reports prepared in anticipation of litigation may fall within the attorney client privilege.<sup>118</sup> 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.<sup>119</sup>

There is considerable overlap between the pending litigation exemption and both the attorney client privilege<sup>120</sup> and attorney work product protection.<sup>121</sup> However, the exemption for pending litigation is not limited solely to documents that fall within either the attorney client privilege or work product protection.<sup>122</sup> 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.<sup>123</sup>

### **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.

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.<sup>124</sup> 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.

### ***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.<sup>125</sup> 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.<sup>126</sup> 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,<sup>127</sup> the names and addresses of residential water customers who exceeded their water allocation under a rationing ordinance,<sup>128</sup> and the names of donors to a university-affiliated foundation, even though those donors had requested anonymity.<sup>129</sup>

### **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.<sup>130</sup> 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.<sup>131</sup>

### ***Personnel Records***

"Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy" are exempt from disclosure.<sup>132</sup> The express policy declaration at the beginning of the Act "bespeaks legislative concern for individual privacy as well as disclosure."<sup>133</sup> 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.<sup>134</sup>

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#### ***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.

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#### ***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.

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**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.<sup>138</sup>

In addition, the public interest exemption may protect certain personnel records from disclosure.<sup>135</sup> 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.<sup>136</sup>

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."<sup>137</sup>

**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.<sup>139</sup>

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.<sup>140</sup>

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**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.<sup>145</sup>

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.<sup>141</sup> The names, salary information and employment dates and departments of peace officers have been determined to be disclosable records.<sup>142</sup>

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."<sup>143</sup> Such a qualified privilege in federal court results in a very similar weighing of the potential benefits of disclosure against potential disadvantages.<sup>144</sup>

**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.<sup>146</sup> 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.<sup>147</sup>

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.<sup>148</sup> 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.<sup>149</sup>

## 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.<sup>150</sup> 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.<sup>151</sup> 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.<sup>152</sup> Contractors are required to file certified copies of the requested records with the requesting entity within ten days of receipt of a written request.<sup>153</sup>

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.<sup>154</sup> 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.<sup>155</sup> The name and address of the contractor or subcontractor may not be redacted.<sup>156</sup>

The Director of the Department of Industrial Relations has adopted regulations governing release of certified payroll records and applicable fees.<sup>157</sup> 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.<sup>158</sup>



## 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.<sup>159</sup> 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.<sup>160</sup> This limited access may be either through an in-person examination or by release of certain information to the test subject.<sup>161</sup> 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.<sup>162</sup> All such reports and information submitted to the Commission are public records subject to disclosure under the Act.<sup>163</sup>

## 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.<sup>164</sup> 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.<sup>165</sup> 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.<sup>166</sup> 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.<sup>167</sup> 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.<sup>168</sup> 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.<sup>169</sup> 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.<sup>170</sup>

### **Recipients of Public Services**

Disclosure of information regarding food stamp recipients is prohibited.<sup>171</sup> 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.<sup>172</sup> This latter prohibition does not create a privilege.<sup>173</sup>

### **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.<sup>174</sup> 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.<sup>175</sup>

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.<sup>176</sup>

## ***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.<sup>177</sup> 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.<sup>178</sup>

## ***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.<sup>179</sup>

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.<sup>180</sup> 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.<sup>181</sup>

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.<sup>182</sup>

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.<sup>183</sup>

The Act contains several exemptions that address specific types of information that may constitute a trade secret — pesticide safety and efficacy information,<sup>184</sup> air pollution data,<sup>185</sup> and corporate siting information.<sup>186</sup> 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.<sup>187</sup>

## ***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.<sup>188</sup> 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,<sup>189</sup> an officer or employee of another governmental agency when necessary for performance of official duties,<sup>190</sup> by court



order or request of a law enforcement agency relative to an ongoing investigation,<sup>191</sup> when the local agency determines the customer used utility services in violation of utility policies,<sup>192</sup> or if the local agency determines the public interest in disclosure clearly outweighs the public interest in nondisclosure.<sup>193</sup>

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.<sup>194</sup>

## ■ 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.<sup>195</sup> Weighing the public interest in nondisclosure and the public interest in disclosure under the public interest exemption is often described as a balancing test.<sup>196</sup> 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.<sup>197</sup>

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.<sup>198</sup>

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.<sup>200</sup> 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.<sup>201</sup>

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.<sup>202</sup> 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.<sup>203</sup>

### **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.<sup>199</sup>



## *Deliberative Process Privilege*

The public interest exemption incorporates the deliberative process privilege.<sup>204</sup> Like the “drafts” exemption, the deliberative process privilege derives from the FOIA “memorandums” exemption and its implementation of the executive or deliberative process privilege.<sup>205</sup> 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.<sup>206</sup>

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.<sup>207</sup>

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.<sup>208</sup>

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.<sup>209</sup>

### ■ 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.”<sup>210</sup> 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.”<sup>211</sup> 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.<sup>212</sup>

### **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.





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,<sup>213</sup> this is consistent with longstanding case authority.<sup>214</sup> 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.”<sup>215</sup>

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.<sup>216</sup> 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.<sup>217</sup> 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.<sup>218</sup>

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## 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.App.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

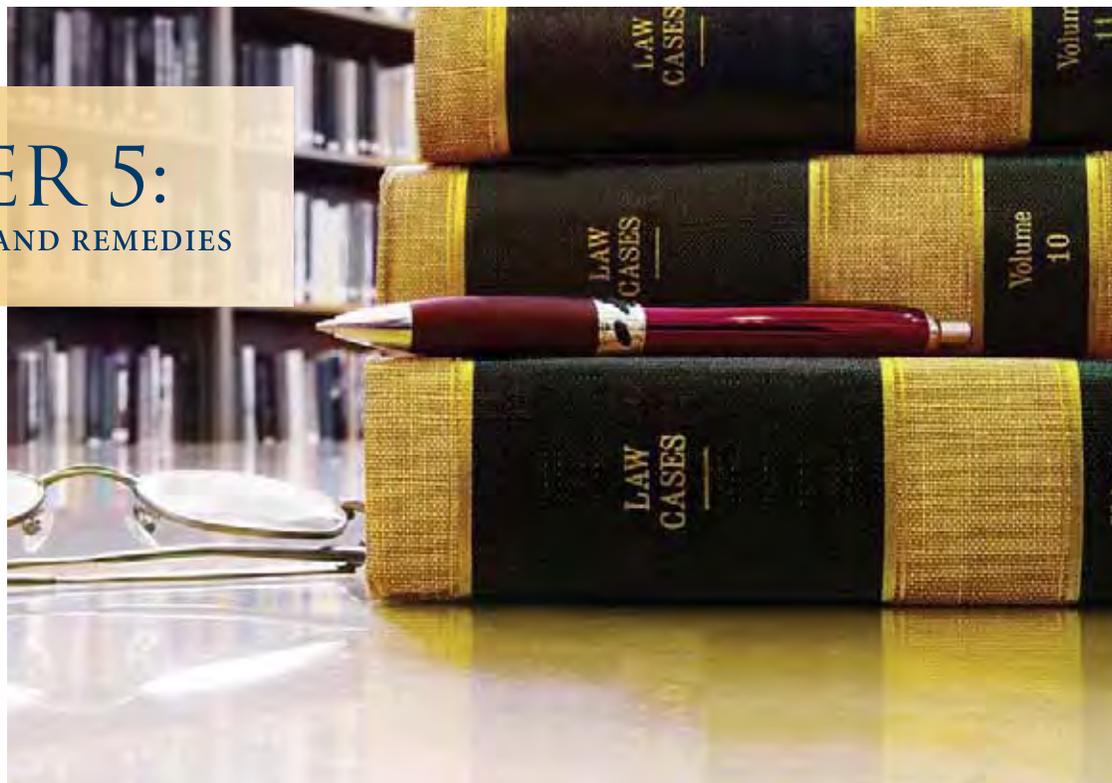
THE TRIAL COURT PROCESS  
AND DECISION

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.<sup>1</sup> In contrast to other governmental transparency laws such as the Ralph M. Brown Act,<sup>2</sup> 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.<sup>3</sup> A person who successfully enforces his or her rights under the Act is entitled to receive reasonable attorney fees and court costs.<sup>4</sup> This chapter discusses the special rules that apply to lawsuits brought to enforce the Act.

### ■ 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

#### **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.

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.<sup>9</sup> 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.<sup>10</sup>

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,<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> 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.

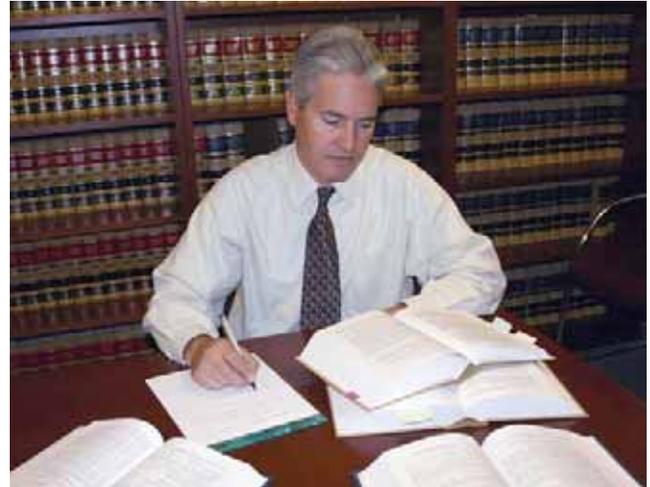
A local agency must disclose the public records pursuant to the trial court's order unless a party obtains a stay of the order or judgment through a petition to the appellate court. Absent a stay, any person who fails to obey the order of the court shall be ordered to show cause why he or she is not in contempt of court.<sup>16</sup>

## ■ 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.<sup>17</sup> This manner of providing for appellate review through an extraordinary writ procedure rather than a normal appeal has been held to be constitutional.<sup>18</sup>

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.<sup>19</sup>

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.<sup>20</sup>



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.<sup>21</sup>



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.<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> Similarly, an award of sanctions in a public records case is subject to appeal rather than a petition for an extraordinary writ.<sup>25</sup>

### ■ ATTORNEY FEES AND COSTS

If the plaintiff prevails in the litigation, the judge must award court costs and reasonable attorney fees to the plaintiff.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup>

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.<sup>32</sup>

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### 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.<sup>1</sup> If requested, the agenda material must be made available in appropriate alternative formats to persons with disabilities.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> Local agency legislative bodies may establish a fee for mailing agenda materials.<sup>5</sup> The fee may not exceed the cost of providing the service.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> The agency may charge a fee for a copy of this record; however, no surcharge may be imposed on persons with disabilities.<sup>10</sup> 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.<sup>11</sup>

## ■ 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.”<sup>12</sup> 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.”<sup>13</sup> Some provisions of the Act deal explicitly with electronic records.

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.<sup>14</sup> Duplication costs of electronic records are limited to the direct cost of producing the electronic copy.<sup>15</sup> 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.<sup>16</sup> Agencies are not required to reconstruct electronic copies of records no longer available to the agency in electronic format.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> The exception for agency-developed software does not affect other public agency electronic records.<sup>20</sup>

### **Practice Tip:**

Local agencies should consult with legal counsel concerning disclosure of metadata or GIS information.



### **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.

## ■ 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.

## ■ 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.<sup>21</sup> Its sole function is to provide for disclosure.<sup>22</sup> 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.<sup>23</sup> For example, duplicate records that are less than two years old may be destroyed if no longer required.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>



However, there is no definition of the “public records” subject to state records retention statutes.<sup>27</sup> 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.”<sup>28</sup> 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.<sup>29</sup>

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## 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*





# THE PEOPLE’S BUSINESS:

## *A Guide to the California Public Records Act*



### 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
<b>Agenda materials distributed to a legislative body relating to an open session item</b>	Yes	Gov. Code, § 54957.5. <i>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”.</i>
<b>Calendars of Elected Officials</b>	Probably not, but note that there is no published appellate court decision on this issue post- Prop. 59. <sup>1</sup>	<i>Times Mirror Co. v. Superior Court</i> (1991) 53 Cal.3d. 1325 and <i>Rogers v. Superior Court</i> (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. <i>For additional information, see p. 35 of the Guide.</i>
<b>Contact information – Names, addresses, and phone numbers of crime victims or witnesses</b>	No	Gov. Code, § 6254(f)(2). <i>For additional information, see p. 29 of the Guide.</i>
<b>Citizen complaints against peace officers – annual summary report to AG</b>	Yes	Pen. Code, § 832.7(c). <i>For additional information, see p. 30 of the Guide.</i>
<b>Citizen complaint information – names, addresses, and telephone numbers</b>	No	<i>City of San Jose v. San Jose Mercury News</i> (1999) 74 Cal. App.4th 1008. <i>For additional information, see p. 30 of the Guide.</i>
<b>Claims for damages</b>	Yes	<i>Poway Unified School District v. Superior Court</i> (1998) 62 Cal.App.4th 1496.
<b>Election petitions (initiative, referendum and recall petitions)</b>	No, except to proponents if petition found to be insufficient.	Gov. Code, § 6253.5; Elec. Code, §§ 17200, 17400, and 18650; Evid. Code, § 1050. <i>For additional information, see p. 21 of the Guide.</i>
<b>Emails between government staff</b>	It depends.	Generally, emails are deleted by administrative policy and are not retained in the ordinary course of business. (See § 6254(a)). See also <i>Times Mirror v. Superior Court</i> (1991) 53 Cal.3d 1325; <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469 for a discussion of the deliberative process privilege. <i>For additional information, see p. 35 of the Guide.</i>

<sup>1</sup> 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
<b>Employment Agreements/ Contracts</b>	Yes	Gov. Code, §§ 6254.8 and 53262(b). <i>For additional information, see p. 30 of the Guide.</i>
<b>Form 700 (Statement of Economic Interests) and Campaign Statements</b>	Yes <sup>2</sup>	Gov. Code, § 81008
<b>Grading documents including geology reports, compaction reports, and soils reports submitted in conjunction with an application for a building permit</b>	Yes	89 Ops.Cal.Atty.Gen. 39 (2006); but see Gov. Code, § 6254(e). <i>For additional information, see p. 19 of the Guide.</i>
<b>Juvenile Court Records</b>	No	<i>T.N.G. v. Superior Court</i> (1971) 4 Cal.3d. 767; Welf. & Inst. Code, §§ 827 and 828. <i>For additional information, see p. 24 of the Guide.</i>
<b>Legal billing statements</b>	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.; <i>Smith v. Laguna Sun Villas Community Assoc.</i> (2000) 79 Cal.App.4th 639; <i>United States v. Amlani</i> , 169 F.3d 1189 (9th Cir. 1999); <i>Clarke v. American Commerce National Bank</i> , 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. <i>For additional information, see p. 19, 28 of the Guide.</i>
<b>Library Circulation Records</b>	No	Gov. Code, § 6254(j) and 6267. <i>For additional information, see p. 25 of the Guide.</i>
<b>Medical Records</b>	No	Gov. Code, § 6254(c). <i>For additional information, see p. 25 of the Guide.</i>
<b>Mental Health detentions (5150 reports)</b>	No	Welf. & Inst. Code, § 5328. <i>For additional information, see p. 24 of the Guide.</i>
<b>Minutes of Closed Sessions</b>	No	Gov. Code, § 54957.2(a). <i>For additional information, see p. 19, 34, 35 of the Guide.</i>
<b>Notices/Orders to property owner re: housing/building code, violations</b>	Yes	Gov. Code, § 6254.7(c). <i>For additional information, see p. 20 of the Guide.</i>
<b>Official Building Plans (architectural drawings and plans)</b>	Inspection only. Copies provided under certain circumstances.	Health & Saf. Code, § 19851; see also 17 U.S.C. §§101 and 102. <i>For additional information, see p. 19 of the Guide.</i>
<b>Personal Financial Records</b>	No	Gov. Code, § 7470, 7471, 7473; see also Gov. Code, § 6254(n). <i>For additional information, see p. 25 of the Guide.</i>

<sup>2</sup> 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
<b>Personnel</b>		
<ul style="list-style-type: none"> <li>Employee inspection of own personnel file</li> <li>Names and salaries (including performance bonuses and overtime) of public employees, including peace officers</li> <li>Test Questions, scoring keys, and other examination data.</li> </ul>	<p>Yes, with exceptions.</p> <p>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).</p> <p>No</p>	<p><i>For additional information, see p. 29-31 of the Guide.</i></p> <ul style="list-style-type: none"> <li>Lab. Code, § 1198.5. This section applies to charter cities. See Gov. Code, § 31011. For peace officers, see Gov. Code, § 3306.5.</li> <li><i>International Federation of Professional and Technical Engineers, Local 21, AFL-CIO, et al. v. Superior Court</i> (2007) 42 Cal.4th 319.</li> <li>Gov. Code, § 6254(g)</li> </ul>
<b>Police</b>		
<ul style="list-style-type: none"> <li>Citizen complaint policy</li> <li>Criminal history</li> <li>Criminal investigative reports including booking photos, audio recordings, dispatch tapes, 911 tapes and in-car video</li> <li>Crime reports</li> <li>Gang intelligence information</li> <li>In custody death reports to AG</li> <li>List of concealed weapon permit holders</li> <li>Concealed weapon permits and applications</li> <li>Officer's personnel file</li> <li>Peace officer's name, employing agency and employment dates</li> <li>Names of officers involved in critical incidents</li> <li>Traffic accident reports</li> </ul>	<p>Yes</p> <p>No</p> <p>No</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes, except for home/ business address and medical/psychological history.</p> <p>No</p> <p>Yes, absent unique, individual circumstances.</p> <p>Yes, absent unique, individual circumstances.</p> <p>Yes, to certain parties.</p>	<p><i>For additional information, see p. 22-25 of the Guide.</i></p> <ul style="list-style-type: none"> <li>Pen. Code, § 832.5(a)(1)</li> <li>Pen. Code, § 13300 <i>et seq.</i>; Pen. Code, § 11105 <i>et seq.</i></li> <li>Gov. Code, § 6254(f); <i>Haynie v. Superior Court</i> (2001) 26 Cal.4th 1061.</li> <li>Gov. Code, §§ 6254(f), 6255</li> <li>Gov. Code, § 6254(f); 79 Ops.Cal.Atty Gen. 206 (1996).</li> <li>Gov. Code, § 12525</li> <li>Gov. Code, § 6254(u)(1); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.</li> <li>Gov. Code, § 6254(u)(1); <i>CBS, Inc. v. Block</i> (1986) 42 Cal.3d 646.</li> </ul> <p>This information can only be disclosed through a Pitchess motion. Pen. Code, §§ 832.7 and 832.8; Evid. Code, §§ 1043-1045.</p> <ul style="list-style-type: none"> <li><i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278.</li> <li><i>Commission on Peace Officer Standards and Training v. Superior Court</i> (2007) 42 Cal.4th 278; <i>New York Times v. Superior Court</i> (1997) 52 Cal.App.4th 97.</li> <li>Veh. Code, § 16005 [only <i>disclose</i> to those needing the information, such as insurance companies, and the individuals involved].</li> </ul>

## Frequently Requested Information and Records, Continued

Information/Records Requested	Must the Information/Record Generally Be Disclosed?	Applicable Authority
<b>Public Contracts</b> <ul style="list-style-type: none"> <li>Bid Proposals, RFP proposals</li> <li>Financial information submitted for bids</li> <li>Trade secrets</li> </ul>	<p>Yes, but only after negotiations are complete.</p> <p>No</p> <p>No</p>	<ul style="list-style-type: none"> <li><i>Michaelis v. Superior Court</i> (2006) 38 Cal. 4th 1065; but see Gov. Code, § 6255 and Evid. Code, § 1060. For additional information, see p. 31-32 of the Guide.</li> <li>Gov. Code, §§ 6254(a),(h) and (k), 6254.15 and 6255; <i>Schnabel v. Superior Court of Orange County</i> (1993) 5 Cal.App.4th 704, 718. For additional information, see p. 31-32 of the Guide.</li> <li>Evid. Code, § 1060; Civ. Code, § 3426, et seq. For additional information, see p. 33 of the Guide.</li> </ul>
<b>Purchase price of real property</b>	Yes, after the agency acquires the property.	Gov. Code, § 7275
<b>Real Estate</b> <ul style="list-style-type: none"> <li>Property information (such as selling assessed value, square footage, number of rooms)</li> <li>Appraisals and offers to purchase</li> </ul>	<p>Yes</p> <p>Yes, but only after conclusion of the property acquisition.</p>	<p>For additional information, see p. 32 of the Guide.</p> <ul style="list-style-type: none"> <li>88 Ops.Cal.Atty.Gen. 153 (2005)</li> <li>Gov. Code, § 6254(h); Note that Gov. Code, § 7267.2 requires release of more information to the property owner while the acquisition is pending.</li> </ul>
<b>Report of arrest not resulting in conviction</b>	No, except as to peace officers or peace officer applicants.	Lab. Code, § 432.7
<b>Settlement Agreements</b>	Yes	<i>Register Division of Freedom Newspapers v. County of Orange</i> (1984) 158 Cal.App.3d 893. For additional information, see p. 28 of the Guide.
<b>Software, including mapping systems</b>	No	Gov. Code, § 6254.9; 88 Ops.Cal.Atty.Gen. 153 (2005). For additional information, see p. 51 of the Guide.
<b>Taxpayer information received in connection with collection of local taxes</b>	No	Gov. Code, § 6254(i). For additional information, see p. 33 of the Guide.
<b>Telephone Records of Elected Officials</b>	Yes, as to expense totals. No, as to phone numbers called.	See <i>Rogers v. Superior Court</i> (1993) 19 Cal.App.4th 469. For additional information, see p. 35 of the Guide.
<b>Utility usage data</b>	No, with certain exceptions.	Gov. Code, § 6254.16. For additional information, see p. 33 of the Guide.
<b>Voter information</b>	No	Gov. Code, § 6254.4. For additional information, see p. 21 of the Guide.



**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 photographic materials, video productions, and other media-related features. (The latest FPPC rules and regulations can be found at [www.fppc.ca.gov](http://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 City, 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 inquiries 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 et 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](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 – COUNCIL COMPENSATION



## **BENEFITS SUMMARY FOR CITY COUNCIL MEMBERS (2025)**

City Council Members, including the Mayor, receive salary and benefits as described in this Code of Conduct and Governance Protocols, and further defined below.

### **Salary**

- \$950 per month
- Bi-weekly (26 annual pay periods)

### **Retirement**

- “Optional Member” under the City’s CalPERS retirement contract.
  - If a Council Member opts out of CalPERS retirement, then enrollment in PARS Alternative Plan is required.
- Eligible to participate in the City’s 457 Deferred Compensation Plans.

### **Health and Wellness Benefits**

- The City contributes a monthly payment equal to 90% of the Kaiser HMO premium rates at each level of coverage (Employee only, Employee plus One Dependent, and Family).
- City provides Employee-only coverage for Dental and Vision insurance. Council Members may acquire coverage for eligible dependents at the same rates available to City employees.
- City provides Employee-only coverage for Life Insurance and Accidental Death and Dismemberment. Council Members may acquire supplemental coverage at the same rates available to City employees.
- Council Members vested in the City’s retirement program are eligible for retiree medical insurance benefits with same benefit levels as described in the Unrepresented Compensation Program.

### **Vehicle Stipend**

- \$500 per month

### **Telephone Stipend**

- \$50 per month

### **Technology Stipend**

- \$35 per month

### **Electronic Tablet Policy**

- Council Members are issued electronic tablets to conduct City business during term in office.

### **Computer Tablet Acquisition Policy**

- Eligible to participate in tablet purchase program at the same rates available to City employees.

### **Computer Revolving Loan Program**

- Eligible to participate in computer loan program at the same rates available to City employees.

## **APPENDIX H -LIST OF COUNCIL POLICIES**

## **Example City 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



## **TITLE**

Newell Drive Extension

## **RECOMMENDATION**

Receive and file and update on the extension of Newell Drive.

## **CONTACT**

Jason Holley, City Manager

## **BACKGROUND & ANALYSIS**

This item responds to Council's request for an update on the Newell Drive Extension Project.

Extending Newell Drive helps accomplish American Canyon's Transportation Goal – to "Improve the transportation network within the City to alleviate congestion and enhance the quality of life for the community."

Specifically, the Project would result in the continuation of a north-south roadway east of Highway 29, which is consistent with Strategy TR-3 ("Expand network of local streets and parallel routes to Highway 29").

Simply put, the Newell Drive Extension Project is significant for the American Canyon community and the Napa Valley region, impacting transportation, economic development, and community well-being.

Newell Drive is comprised of four (4) sections. Segment 1 is complete. Segments 2 and 3 are underway and within City limits. Segment 4 as proposed is located outside City-limits in an area planned for annexation in the near future (Attachment 1).

Segment 4 is contingent on the occurrence of other actions some of which are accomplished by other governmental agencies. Design cannot begin until a decision about the type of railroad crossing (at-grade vs. grade-separated) is reached. Environmental review of City action on the annexation is complete but challenged by the City of Vallejo. Property acquisition is 60% complete, but also delayed because of the legal challenge. Construction is anticipated to occur in conjunction with development activity within the Watson Lane Annexation Area.

Funding Challenges: In 2017, Segment 4 had an estimated cost of \$10M with an at-grade railroad crossing. The grade-separated crossing was estimated at an additional cost of \$20M. Due to inflation, these costs will be at least 50% higher. Developers will contribute a portion of the roadway costs with additional funding sources needed. Securing grant funding is difficult because of State requirements for projects similar to that proposed and there are competing local budget priorities and limited available financial resources that could also hinder progress on Segment 4.

Environmental Concerns: Potential environmental impacts, such as effects on local wildlife, habitats, or water quality, were extensively studied and mitigation measures reducing impacts have been identified and adopted. The studies for Segment 4 demonstrate the at-grade railroad crossing is the least damaging (environmental) alternative when compared to the grade-separated crossing.

Regulatory Hurdles: Navigating the regulatory landscape can be complex. The Project requires various permits and approvals from state and federal agencies, most significantly, special approval from the California Public Utilities Commission for a Segment 4 at-grade crossing because of concerns about safety (in contrast to a grade-separated crossing which would be a ministerial approval). Also, special approval from the other governmental agencies would be required for the grade separated-crossing as it would have more project impacts. Thus, Segment 4 is currently also delayed pending a decision about the railroad crossing.

Land Acquisition: The City has agreements with two (2) property owners to acquire property rights for Segment 4 once annexation is complete. Property acquisition from the remaining properties cannot begin until a decision on the type of railroad crossing is complete, because impacts to properties could be more wide-ranging with a grade-separated alternative compared to a at-grade crossing.

#### Litigation

Since 2023, the City of Vallejo through Vallejo's City Attorney has initiated three (3) lawsuits against American Canyon on several theories of American Canyon not complying with applicable law. One of the cases was decided in American Canyon's favor at the trial court. The remaining lawsuits, including one challenging portions of the annexation containing Segment 4, are progressing through the legal system.

## **COUNCIL PRIORITY PROGRAMS AND PROJECTS**

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

## **FISCAL IMPACT**

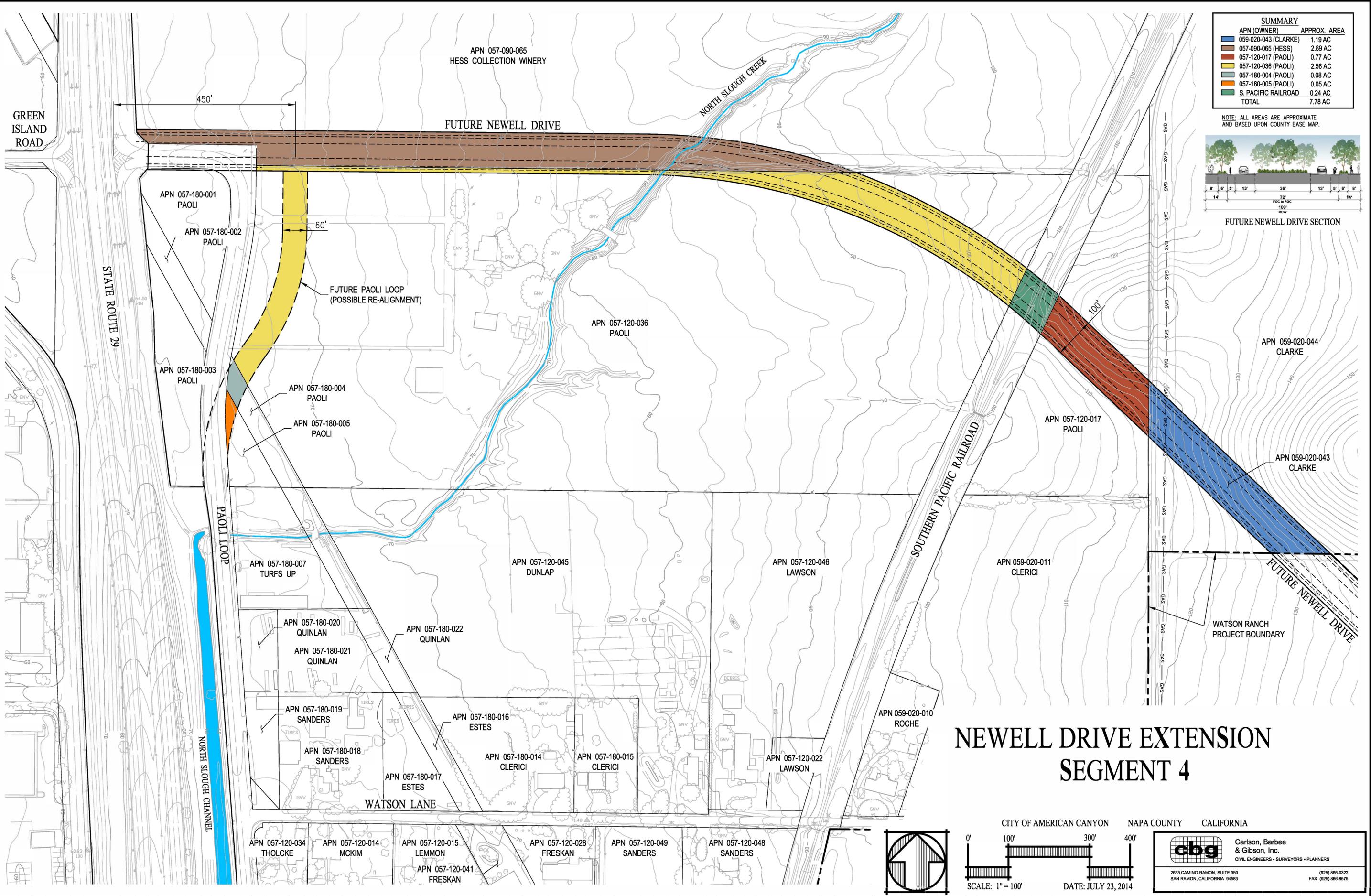
Not applicable

## **ENVIRONMENTAL REVIEW**

This communication provides information only and is not a Project under the California Quality Environmental Quality Act.

## **ATTACHMENTS:**

1. [Newell Drive Segment 4](#)





**TITLE**

Q2 FY24/25 Capital Project Schedule Update

**RECOMMENDATION**

Informational item with City Council feedback

**CONTACT**

Erica Ahmann Smithies, P.E., Public Works Director/City Engineer

**BACKGROUND & ANALYSIS**

The Public Works Department will be providing quarterly updates on the status and delivery of Capital Improvement Projects (CIP) for the current fiscal year. City Council will be provided with a master project schedule, a map of citywide projects, and photos when available. The projects will include the name of the City staff member leading the project and consultant when applicable. At this time there are some projects that do not include a project lead, but will be updated as the fiscal year unfolds.

**FISCAL IMPACT**

The Capital Improvement Program Budget was adopted by City Council on June 4, 2024.

**ENVIRONMENTAL REVIEW**

None

**ATTACHMENTS:**

- [1. CIP 90-Day Summary](#)
- [2. FY24-25 CIP Schedule Q2](#)
- [3. FY24-25 CIP Project Map Q2](#)

## **Capital Project Accomplishments in the previous 90 Days:**

### **Construction Completed:**

- Benton Way substantially completed prior to school start – remaining item is a RRFB lighted crosswalk on Benton Way at Hummingbird way

### **Construction started:**

- Newell Open Space Trailhead and Parking Lot Improvements

### **Design Completed:**

- Knightsbridge Water and Pavement Improvements
- Melvin Road Sidewalk and Storm Drain Improvements

## **Capital Project Goals for the next 90 Days:**

### **Under Construction:**

- Newell Open Space Trailhead and Parking Lot Improvements

### **Award of Construction Contracts:**

- City Hall Roof Repair
- Knightsbridge Water and Pavement Improvements
- Melvin Road Sidewalk and Storm Drain Improvements
- Green Island Road Widening and Reconstruction
- Rancho Del Mar Utility and Pavement Improvements
- Wetlands Edge Enhancement and

### **Design Completed**

- Silver Oak Restroom
- Northampton Restroom
- Northampton Shade Structure

### **Award of Design Contracts**

- South Kelly Road/Hwy 29 Intersection Improvements

ID	Task Mode	Task Name	Duration	Start	Finish	Resource Names	Qtr 4, 2024	Nov	Dec	Qtr 1, 2025	Jan	Feb	Mar	Qtr 2, 2025	Apr	May	Jun	Qtr 3, 2025	Jul	Aug	Sep
19		TR22-0400 Benton Pavement Rehab	112 days	Thu 6/20/24	Fri 11/22/24																
20		BENTON WAY RECONSTRUCTION	112 days	Thu 6/20/24	Fri 11/22/24																
21		Construction	110 days	Mon 6/24/24	Fri 11/22/24	Kristine Delos Santos, Vendon McLeod															
22		TR16-0700 Green Island Road	353 days	Thu 6/20/24	Mon 10/27/25																
23		GREEN ISLAND ROAD RECONSTRUCTION AND WIDENING PROJECT	353 days	Thu 6/20/24	Mon 10/27/25																
24		Utility Undergrounding Construction	47 days	Thu 6/20/24	Fri 8/23/24																
25		Construction	111 days	Sun 6/30/24	Fri 11/29/24	Ronald Ranada, Consultant (Conzor)															
26		Green Island Road Reconstruction and Widening Project	353 days	Thu 6/20/24	Mon 10/27/25																
27		Design	112 days	Thu 6/20/24	Fri 11/22/24	Ronald Ranada, Consultant (Conzor)															
28		Award Contract (City Council)	0 days	Tue 2/4/25	Tue 2/4/25																
29		Construction	168 days	Mon 3/3/25	Wed 10/22/25	Ronald Ranada, Consultant (TBD)															
101		WW20-0100 SS4 Broadway Sewer	211 days	Tue 6/25/24	Tue 4/15/25																
102		WW20-0100 SS4 Broadway Sewer	211 days	Tue 6/25/24	Tue 4/15/25																
103		Mainline (City)	211 days	Tue 6/25/24	Tue 4/15/25																
104		Design	94 days	Tue 6/25/24	Fri 11/1/24	David Miller, Ronald Ranada															
105		Award Contract (City Council)	0 days	Tue 1/21/25	Tue 1/21/25																
106		Construction	32 days	Mon 3/3/25	Tue 4/15/25	Ronald Ranada															
107		SR29 Crossing (RSA)	211 days	Tue 6/25/24	Tue 4/15/25																
108		Design	94 days	Tue 6/25/24	Fri 11/1/24	Consultant (RSA)															
109		Award Contract (City Council)	0 days	Tue 1/21/25	Tue 1/21/25																
110		Construction	32 days	Mon 3/3/25	Tue 4/15/25																
50		PR13-0200 Newell Open Space	109 days	Thu 6/20/24	Tue 11/19/24																
51		Newell Open Space	109 days	Thu 6/20/24	Tue 11/19/24																
52		Design	48 days	Thu 6/20/24	Mon 8/26/24	Ronald Ranada, Kristine Delos Santos, Consultant (Quest)															
53		Award Contract (City Council)	0 days	Tue 9/17/24	Tue 9/17/24																
54		Construction	35 days	Wed 10/2/24	Tue 11/19/24	Ronald Ranada, Kristine Delos Santos, Vendon McLeod															
6		TR23-0100 Knightsbridge (ARPA)	209 days	Tue 6/25/24	Fri 4/11/25																
7		TR23-0100 Knightsbridge	209 days	Tue 6/25/24	Fri 4/11/25																
8		Design	74 days	Tue 6/25/24	Fri 10/4/24	Ginny Leija, Ronald Ranada, Consultant (Bellecci)															
9		Award Contract (City Council)	0 days	Tue 11/19/24	Tue 11/19/24																
10		Construction	60 days	Mon 1/20/25	Fri 4/11/25	Ronald Ranada, Consultant (TBD)															
84		TR24-0300 Rancho Del Mar (ARPA)	244 days	Tue 6/25/24	Fri 5/30/25																
85		TR24-0300 Rancho Del Mar	244 days	Tue 6/25/24	Fri 5/30/25																
86		Design	84 days	Tue 6/25/24	Fri 10/18/24	Ronald Ranada, Consultant (Bennett)															
87		Award Contract (City Council)	0 days	Tue 12/17/24	Tue 12/17/24																
88		Construction	85 days	Mon 2/3/25	Fri 5/30/25	Ronald Ranada, Vendon McLeod															
89		TR24-0200 Melvin SD and Swk (ARPA)	309 days	Tue 6/25/24	Fri 8/29/25																
90		TR24-0200 Melvin SD and Swk	309 days	Tue 6/25/24	Fri 8/29/25																
91		Design	69 days	Tue 6/25/24	Fri 9/27/24	Ginny Leija, Ronald Ranada, Consultant (Coastland)															
92		Award Contract (City Council)	0 days	Tue 11/19/24	Tue 11/19/24																
93		Construction	90 days	Mon 4/28/25	Fri 8/29/25	Ronald Ranada, Vendon McLeod															
79		TR24-0100 2024 Annual Paving (Cape)	395 days	Mon 1/6/25	Fri 7/10/26																
80		TR24-0100 Annual Paving (Cape)	395 days	Mon 1/6/25	Fri 7/10/26																
81		Design	40 days	Mon 1/6/25	Fri 2/28/25	Kristine Delos Santos															
82		Award Contract (City Council)	0 days	Tue 12/2/25	Tue 12/2/25																
83		Construction	50 days	Mon 5/4/26	Fri 7/10/26	Kristine Delos Santos, Vendon McLeod															
69		TR23-0200 S Kelly - SR29	291 days	Tue 6/25/24	Tue 8/5/25																
70		TR23-0200 S Kelly - SR29	235 days	Mon 12/9/24	Fri 10/31/25																
71		Design	81 days	Mon 12/9/24	Mon 3/31/25	Kristine Delos Santos, Ronald Ranada, Consultant (TBD)															
72		Award Contract (City Council)	0 days	Tue 6/3/25	Tue 6/3/25																
73		Construction	90 days	Mon 6/30/25	Fri 10/31/25	Kristine Delos Santos, Ronald Ranada															
74		TR23-0300 Am Can Rd East Guardrail	164 days	Tue 6/25/24	Fri 2/7/25																
75		TR23-0300 Am Can Rd East Guardrail	164 days	Tue 6/25/24	Fri 2/7/25																
76		Design	65 days	Mon 11/4/24	Fri 1/31/25	Kristine Delos Santos, Ronald Ranada, Consultant (TBD)															
77		Award Contract (City Council)	0 days	Tue 5/20/25	Tue 5/20/25																
78		Construction	45 days	Mon 6/23/25	Fri 8/22/25	Kristine Delos Santos, Ronald Ranada															
1		WA24-0200 N Kelly Water Main	65 days	Mon 1/6/25	Fri 4/4/25																
2		WA24-0200 N Kelly Water Main	60 days	Mon 1/6/25	Fri 3/28/25																
3		Design	20 days	Mon 1/6/25	Fri 1/31/25	TBD															

Project: CIP 24-25 Schedule  
Date: Fri 10/4/24

Task	Summary	Inactive Milestone	Duration-only	Start-only	External Milestone	Manual Progress
Split	Project Summary	Inactive Summary	Manual Summary Rollup	Finish-only	Deadline	
Milestone	Inactive Task	Manual Task	Manual Summary	External Tasks	Progress	

ID	Task Mode	Task Name	Duration	Start	Finish	Resource Names	Qtr 4, 2024	Nov	Dec	Qtr 1, 2025	Feb	Mar	Qtr 2, 2025	May	Jun	Qtr 3, 2025	Aug	Sep
4	Task	Award Contract	0 days	Mon 2/17/25	Mon 2/17/25	Water Dept staff or CUPCCAA					2/17							
5	Task	Construction	20 days	Mon 3/10/25	Fri 4/4/25	TBD												
11	Task	PR23-0700 Silver Oak Restroom	199 days	Tue 6/25/24	Fri 3/28/25													
12	Task	PR23-0700 Silver Oak Park Restroom	199 days	Tue 6/25/24	Fri 3/28/25													
13	Task	Design	93 days	Tue 6/25/24	Thu 10/31/24	Consultant (RSA)												
14	Task	Award Contract (City Council)	0 days	Tue 2/4/25	Tue 2/4/25						2/4							
15	Task	Construction	20 days	Mon 3/3/25	Fri 3/28/25	TBD												
16	Task	PR23-0600 Comm Park I	268 days	Thu 6/20/24	Mon 6/30/25													
17	Task	PR23-0600 Comm Park I	268 days	Thu 6/20/24	Mon 6/30/25													
18	Task	Construction	268 days	Thu 6/20/24	Mon 6/30/25	Rick Hall												
30	Task	PR23-0500 Northampton Restroom	199 days	Tue 6/25/24	Fri 3/28/25													
31	Task	NORTHAMPTON RESTROOM	199 days	Tue 6/25/24	Fri 3/28/25													
32	Task	Design	93 days	Tue 6/25/24	Thu 10/31/24	Consultant (RSA)												
33	Task	Award Contract (City Council)	0 days	Tue 2/4/25	Tue 2/4/25						2/4							
34	Task	Construction	20 days	Mon 3/3/25	Fri 3/28/25	TBD												
35	Task	PR23-0400 Northampton Shade Structure	130 days	Tue 6/25/24	Mon 12/23/24													
36	Task	NORTHAMPTON SHADE STRUCTURE	130 days	Tue 6/25/24	Mon 12/23/24													
37	Task	Design	93 days	Tue 6/25/24	Thu 10/31/24	Consultant (RSA)												
38	Task	Award Contract (City Manager)	0 days	Tue 2/4/25	Tue 2/4/25						2/4							
39	Task	Construction	30 days	Mon 3/3/25	Fri 4/11/25	Capital Projects Coordinator (TBD)												
40	Task	PR23-0200 Melvin Tennis Courts	80 days	Mon 3/3/25	Fri 6/20/25													
41	Task	Melvin Tennis Courts	80 days	Mon 3/3/25	Fri 6/20/25													
42	Task	Design	20 days	Mon 3/3/25	Fri 3/28/25	Kristine Delos Santos												
43	Task	Award Contract (City Council)	0 days	Tue 5/6/25	Tue 5/6/25													
44	Task	Construction	20 days	Mon 5/26/25	Fri 6/20/25	TBD												
45	Task	PR19-0100 Wetlands Enviro Educational Center	175 days	Mon 6/24/24	Fri 2/21/25													
46	Task	WETLANDS ENVIRO EDU	175 days	Mon 6/24/24	Fri 2/21/25													
47	Task	Design	75 days	Mon 6/24/24	Fri 10/4/24	Consultant (RSA)												
48	Task	Award Contract (City Manager)	0 days	Fri 11/15/24	Fri 11/15/24													
49	Task	Construction	60 days	Mon 12/2/24	Fri 2/21/25	Capital Projects Coordinator (TBD)												
55	Task	CF23-0300 Corp Yard Relocation	135 days	Tue 6/25/24	Mon 12/30/24													
56	Task	CORP YARD RELOCATION & UPGRADE	135 days	Tue 6/25/24	Mon 12/30/24													
57	Task	Construction	135 days	Tue 6/25/24	Mon 12/30/24	Brian Materne												
58	Task	CF23-0100 City Hall Roof	136 days	Tue 6/25/24	Tue 12/31/24													
59	Task	City Hall Roof Improvement	136 days	Tue 6/25/24	Tue 12/31/24													
60	Task	Design	79 days	Tue 6/25/24	Fri 10/11/24	Ginny Leija												
61	Task	Award Contract (City Manager)	0 days	Fri 11/8/24	Fri 11/8/24													
62	Task	Construction	22 days	Mon 12/2/24	Tue 12/31/24	Ginny Leija												
63	Task	WA25-0100 Hanna Water Main (see TR16-0700)																
64	Task	WW16-0300 SCADA	265 days	Tue 6/25/24	Mon 6/30/25													
65	Task	WW16-0300 SCADA	380 days	Tue 6/25/24	Mon 12/8/25													
66	Task	Design	136 days	Tue 6/25/24	Tue 12/31/24	Design Build (TBD)												
67	Task	Award Contract (City Council)	0 days	Tue 2/18/25	Tue 2/18/25													
68	Task	Implementation	196 days	Mon 3/10/25	Mon 12/8/25	Design Build (TBD)												
111	Task	WW24-0100 Andrew Road Sewer Repair (see WW20-0100)																
112	Task	PR25-0600 Main Street Park Improvements	171 days	Mon 1/6/25	Mon 9/1/25													
113	Task	Design	171 days	Mon 1/6/25	Mon 9/1/25	Capital Projects Coordinator (TBD)												
114	Task	PR25-0400 Veterans Park Playground Replacement	149 days	Tue 8/6/24	Fri 2/28/25													
115	Task	Design	66 days	Tue 8/6/24	Tue 11/5/24	Miracle Play Systems												
116	Task	Award Contract (City Council)	0 days	Tue 11/19/24	Tue 11/19/24													
117	Task	Construction	40 days	Mon 1/6/25	Fri 2/28/25	Capital Projects Coordinator (TBD)												
94	Task	WA24-0100 Rio Del Mar Water Main (see TR24-0300)																
95	Task	WA23-0200 WTP Filter Media	191 days	Mon 1/6/25	Mon 9/29/25													
96	Task	Design	191 days	Mon 1/6/25	Mon 9/29/25	Water Ops												
97	Task	WA23-0100 WTP Shop	171 days	Mon 1/6/25	Mon 9/1/25													
98	Task	Design	171 days	Mon 1/6/25	Mon 9/1/25	Capital Projects Coordinator (TBD)												
99	Task	PR23-0100 Melvin Park Expansion	171 days	Mon 1/6/25	Mon 9/1/25													
100	Task	Design	171 days	Mon 1/6/25	Mon 9/1/25	Capital Projects Coordinator (TBD)												

Project: CIP 24-25 Schedule  
Date: Fri 10/4/24

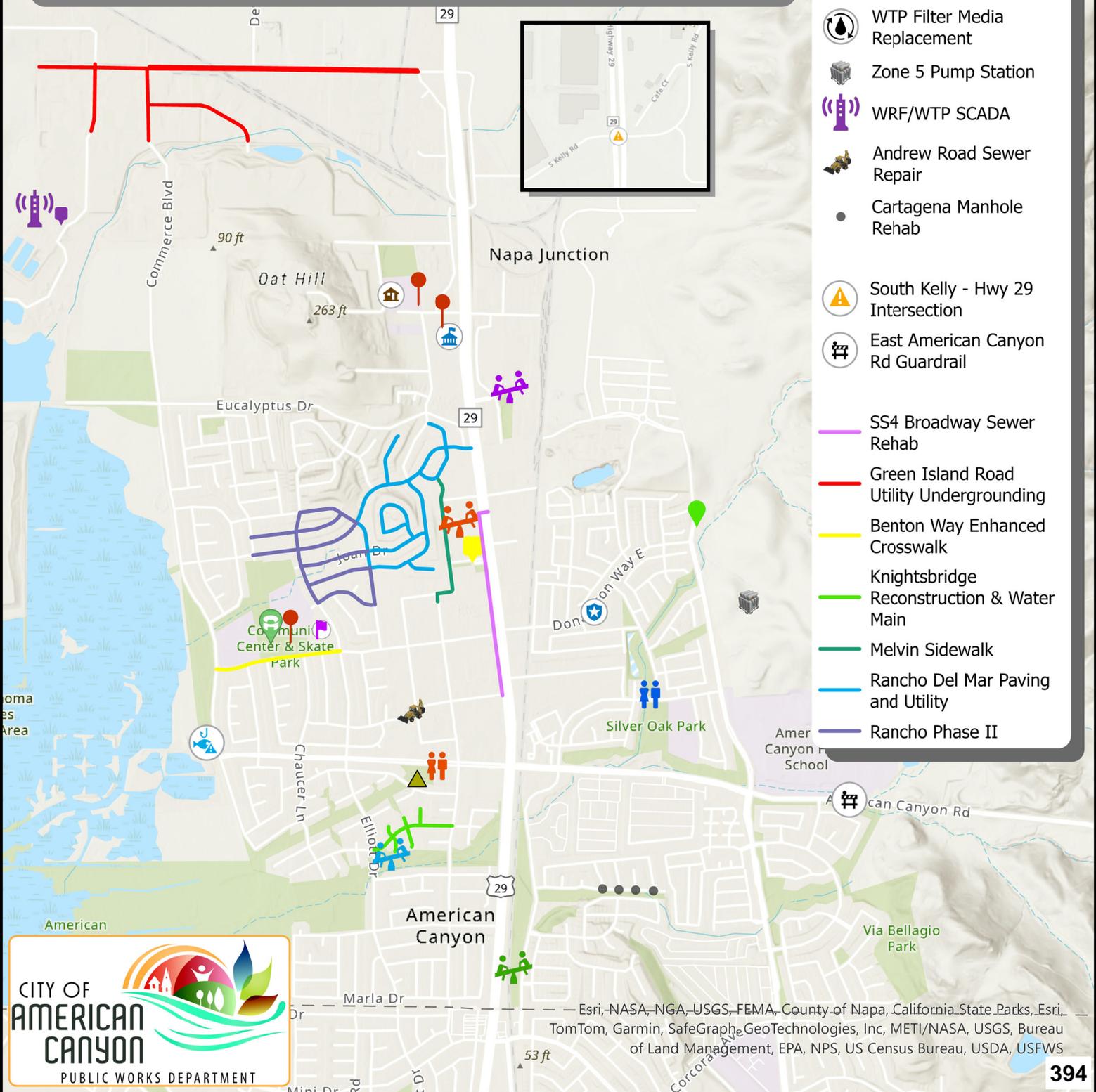
Task	Summary	Inactive Milestone	Duration-only	Start-only	External Milestone	Manual Progress
Split	Project Summary	Inactive Summary	Manual Summary Rollup	Finish-only	Deadline	
Milestone	Inactive Task	Manual Task	Manual Summary	External Tasks	Progress	

# Parks and Facilities Projects

- |                                   |                           |  |                            |
|-----------------------------------|---------------------------|--|----------------------------|
| Newell Open Space Parking lot     | Northampton Shade Canopy  | Linwood Park Improvements                          | City Hall Roof Replacement |
| Environmental Education           | Northampton Park Restroom | Veterans Park Playground Replacement and Resurface | Corp Yard Relocation       |
| Melvin Tennis Courts Improvements | Comm Park I Improvements  | Maint Street Park Improvements                     | EV Charging Stations       |
| Aquatic Facility                  | Silver Oak Restroom       |  | PD Parking Lot             |
|                                   | Melvin Park Improvements  |  |                            |

# Infrastructure

- Recycled Water Fill Stations
- WTP Maintenance Shop
- WTP Filter Media Replacement
- Zone 5 Pump Station
- WRF/WTP SCADA
- Andrew Road Sewer Repair
- Cartagena Manhole Rehab
- South Kelly - Hwy 29 Intersection
- East American Canyon Rd Guardrail
- SS4 Broadway Sewer Rehab
- Green Island Road Utility Undergrounding
- Benton Way Enhanced Crosswalk
- Knightsbridge Reconstruction & Water Main
- Melvin Sidewalk
- Rancho Del Mar Paving and Utility
- Rancho Phase II



Esri, NASA, NGA, USGS, FEMA, County of Napa, California State Parks, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

## Future Agenda Items

### **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

### **November 21, 2024, Planning Commission Meeting. 6:30 p.m. - Special Date Due to Holiday**

Crawford Way Apartment Townhome Design Permit (Action)

### **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

### **December 12, 2024, Parks and Community Services Meeting. 6:30 p.m.**

Cancelled

### **December 17, 2024, Regular City Council Meeting. 6:30 p.m.**

Local Appointments List

FY 2023-24 Auditors Report

Metropolitan Transportation Commission Nomination

Rancho Del Mar Paving and Utility Improvements – Award Construction

**December 19, 2024, Planning Commission Meeting. 6:30 p.m. - Special Date Due to Holiday**

TBD

**Early January TBD Special City Council Meeting**

Commissioner Interviews/Appointments

**January 21, 2024, Regular City Council Meeting: 6:30 p.m.**

SR 29 Multi Midol Project (NVTa)

Green Island Road Project – Award Construction

<b>Unscheduled</b>			
<b>Council Requested Items</b>	<b>Councilmember</b>	<b>Date of Council Vote</b>	<b>Notes</b>
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 <i>Berkeley</i> litigation.
Food Ware Ordinance	Joseph	09/17/2024	In progress, council date TBD