Clean Energy Community Advisory Commission Training

Presented by:
Ed Moran, Assistant City Attorney

February 2018

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

AGENDA

- Annual Workplan & Reports
- Brown Act, City Sunshine, Conflicts of Interest
- Parliamentary Procedure
- City Council Policy 0-4
- San José City Charter
- San José Municipal Code Ch. 2.08
- *Form 700 & Family Gift Report
- *Ethics & Sexual Harassment Training

* Applies to certain Board Members and Commissioners

Frequently Used Terms

- **Council Policy 0-4**
  - Consolidated Policy Governing Boards and Commissions
  - Adopted in 1984, last updated 2016
- **Charter Commissions**
  - Planning Commission
  - Civil Service Commission
  - Salary Setting Commission

Frequently Used Terms

- **Commission Secretary**
  - **City department staff person that staffs your Commission meetings**

Annual Workplan & Reports

- Required by City's Municipal Code
- Each fiscal year, all City Commissions*
  - Annual Workplan of activities
  - Budget of personal and non-personal costs
  - Annual Report of accomplishments
  - Submit to Designated Council Committee

*Except Charter Commissions and the Appeals Hearing Board

DESIGNATED COUNCIL COMMITTEE

Board or Commission	Designated Council Committee
Airport Commission	Transportation and Environment
Arts Commission	Community and Economic Development
Board of Fair Campaign & Political Practices (formerly Ethics Commission)	Rules and Open Government
Clean Energy Community Advisory Commission	Transportation and Environment
Council Appointment Advisory Commission	Rules and Open Government
Downtown Parking Board	Transportation and Environment
Historic Landmarks Commission	Community and Economic Development
Housing and Community Development Commission	
Human Services Commission	
Library and Early Education Commission	Neighborhood Services and Education
Neighborhoods Commission	
Parks and Recreation Commission	
Senior Citizens Commission	
Youth Commission	

BROWN ACT

- General Rule: All meetings must be open to the public.

- The Ralph M. Brown Act, Government Code Sections 54950 - 54963, was enacted in 1953 to ensure local government meetings *were open and public*.

- Scope:
  - Applies to any "legislative body", decision-making or advisory, *including boards, commissions and subcommittees*.
  - Exception: single purpose temporary ("*ad-hoc*") subcommittees formed solely of less than a quorum of the legislative body. Sunshine Resolution § 2.3.1.2 limits an *ad hoc* committee term to less than 6 months.

BROWN ACT – MEETING

- **Any congregation**
- **Of a *majority of the members* of a legislative body**
- **At the *same time and location***
- **To *hear, discuss, deliberate, or take action***
- **On any item within the *subject matter jurisdiction* of the legislative body or the local agency to which it pertains**

BROWN ACT – NOT A MEETING

- **Individual contacts by members of the public**
- **Attending a conference**
- **Attending an open & publicized community meeting (e.g., an election debate)**
- **Attending an open and noticed meeting of another body (but, cf. serial meetings), or**
- **Attending a social function (e.g., a holiday party)**

BROWN ACT – PROHIBITED MEETINGS

- **Use by**
- **A *majority of members***
- **Of a *series of communications* of any kind,**
- **Directly or through intermediaries**
- ***To discuss, deliberate, or take action***
- **On any item of business within the subject matter jurisdiction of the board or commission**

BROWN ACT – PROHIBITED MEETINGS

- **Serial Meetings – Examples:**
- **“Daisy Chain”**
  - **Member A talks to Member B, who then talks to Member C about the same topic.**
- **“Hub And Spoke”**
  - **Member A talks to Member B and then talks to Member D about the same topic**
- **Email Reply to All**

BROWN ACT – PROHIBITED MEETINGS

- **Staff Briefings are allowed**
- **Staff may contact a Commissioner to answer questions or provide information if the Staff member does not communicate the comments or position of any other Commissioner.**

BROWN ACT – AGENDA ITEMS

- **Brief general description of each item of business to be transacted or discussed at the meeting and the proposed Commission action, if any.**
- **Need not exceed 20 words, but enough detail to allow a person who is not familiar with the Commission to determine whether they should attend the meeting.**

BROWN ACT – AGENDA ITEMS

- **No discussion or action of items not on posted Agenda**
- **Comments by Commissioners regarding un-agendized items are only allowed as follows provided that *no discussion or action* occurs:**
  - **Briefly responding to public comment**
  - **Asking a question for clarification**
  - **Referring item to staff**
  - **Brief report by Commissioner on his or her activities**
  - **Brief announcement**

BROWN ACT – PUBLIC COMMENT

- Limited to items within scope of Commission's subject matter jurisdiction
- Required for Regular Meetings
- Highly Recommended for Special Meetings
- City standard = 2 minutes, but Chair has discretion to limit time when appropriate
- Speakers using a translator get twice the time

BROWN ACT – PUBLIC COMMENT

Responding to Issues Not on the Agenda

- **Refer the speaker to staff**
- **Refer the speaker to appropriate reference material**
- **Request staff to report back at a future meeting**
- **Direct staff to place the matter on a future agenda**

BROWN ACT VS. CITY SUNSHINE

Boards, Committees & Commissions	City Sunshine	Brown Act Requirements
Regular Meeting Agenda	7 days, action items	72 hours
Special Meeting Agenda	4 days unless 2/3 of members determine that an issue must be resolved in less than 4 days, then no less than 24 hours	24 hours
Minutes	Action minutes, post draft within 10 days after meeting	Minutes are not generally required
Recordings	Audio record meeting and maintain recording for 2 years	Recording is not required, but if made, must be retained for 30 days
Staff Reports	7 days (posted with Agenda)	Documents provided after agenda posting shall be made available to the public at the place indicated on the Agenda

POLITICAL REFORM ACT

- **Commissioner must recuse if there is a disqualifying financial interest.**
- **Commissioner has a disqualifying financial interest if the *decision* will have a *reasonably foreseeable material* financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family, or on any other listed *financial interest*.**

POLITICAL REFORM ACT

- ***Decision*** – Making or attempting to influence a decision includes making recommendations and reports to a decision-maker. Assume that all of your Commission's actions will qualify.
- ***Financial interest*** – Includes sources of your family's income or gifts; business entities; real property; and your family's personal finances (including a mobile home).
- ***Material*** – Means significant; specific tests for each type of financial interest are located in the state regulations.
- ***Reasonably Foreseeable*** – Determined by state test.

POLITICAL REFORM ACT

Sources of income of $500 or more

- Your own income
- Promised income
- Income of spouse / domestic partner / child
- Loans

POLITICAL REFORM ACT

Real property interests of $2000 or more

- Direct or Indirect
- Spouse / Domestic Partner / Child's Property
- Leasehold Interest (except month to month)
- 500 Foot Rule

POLITICAL REFORM ACT

Other kinds of Interest

- Gifts
- Businesses
- Investments
- Contracts
- Personal bias or interests
- Personal finances

POLITICAL REFORM ACT

If you think you have a conflict:

- Recuse yourself on the record from participation in discussion or voting and refrain from attempting to influence the decision.
- You are not required to leave the dais.
- You may leave the dais and speak as a member of the public with respect to interests that are solely your own.
- Note: recusal can pose voting and quorum issues.

CITY'S REVOLVING DOOR

Form 700 Commissioners

- For 2 years after leaving the commission
- Cannot represent anyone else
- Whether or not for compensation
- Before the commission on which the former commissioner served
- Includes Public Comment
- Exception: representing self
- San José Municipal Code § 12.10.040
- No waiver

PARLIAMENTARY PROCEDURES

- **Establish a Quorum**
  - **Note Absences for the Record**
  - **Note Arrivals / Departures for the Record (affects vote)**
- **Announce Agenda Item Number and Subject**
- **Invite staff / commissioner to present the item**
- **Ask members of the commission if they have questions of clarification**
- **Invite Public Comments**
- **Invite a motion**
  - **Announce who made the motion**
  - **Announce who seconded**
- **Vote**
  - **Must be verbal or shown on public display screen**
  - **Announce vote result, and who voted no or abstained**

COUNCIL POLICY 0-4

Consolidated Board and Commission Policy 0-4*

- Recruitment, Selection, Appointment, and Resignation
- Requirements for Board members and Commissioners
- Board and Commission Governance and Operations
- Code of Conduct
- Authority of Boards and Commissions

*Updated in August 2016.

COUNCIL POLICY 0-4

ROLES & RESPONSIBILITIES OF A BOARD MEMBER AND COMMISSIONER

- **Attend Meetings**
  - **At least 50% of the length of the entire meeting**
  - **Notify Commission Secretary in advance about excused absences**
- **Abide by Code of Conduct & Code of Ethics***
  - **Conduct meetings in dignified and courteous manner**
  - **Be professional, respectful and courteous to staff and public**
  - **Support Chair's effort to conduct meeting effectively and fairly**

*** Code of Ethics: Council Policy 0-15; City Policy 1.2.2**

COUNCIL POLICY 0-4

ROLE OF A CHAIR

- Preside at meeting
  - Run meetings in an orderly, efficient manner
  - Manage conflicts that may arise
  - Keep discussion on topic
  - Stick to the agenda
  - Get through agenda items in a timely manner
- Conduct meetings in accordance with Robert Rules of Order, approved Bylaws, 0-4
- Reference Material: Institute of Local Government – Understanding the Role of Chair

COUNCIL POLICY 0-4

COMMISSION DOs

- **DO** make recommendations only on topics within the scope of authority set forth by Council

- **DO** use City stationery, including emails, only for official Commission business. All correspondence concerning Commission's business should be sent with a copy to City Commission staff.

COUNCIL POLICY 0-4

COMMISSION DOs

- **DO** place items on the Council Agenda in accordance with the Rules Resolution and Commission Workplan
- **DO** make requests for information or for research from staff through the Rules Committee (if more than just copies of existing information)

COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** use your Commissioner title to make personal political endorsements
- **DON'T** use your Commissioner title or speak as a Commissioner unless authorized by the Commission
- **DON'T** interview candidates for political office or endorse such candidates
- **DON'T** individually or as a body independently support or oppose legislation, including ballot measures

COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** contact City consultants outside of a Commission meeting, unless authorized by the City
- **DON'T** represent City or Commission in front of other non-City entities (e.g., County or VTA boards) without express approval from Council

COUNCIL POLICY 0-4

COMMISSION DON'Ts

- **DON'T** accept money or favors for performing your City duties
- **DON'T** use confidential information
- **DON'T** discriminate against anyone
- **DON'T** participate in any discussions if you have a real or perceived personal bias or conflict of interest

COUNCIL POLICY 0-4: LETTERS

- **From Commission re: Council or Council Committee Items**
  - Submit through Commission Secretary
  - Direct email to Council or Council Committee is not allowed
- **From Commission re: Commission Items to Non-City Entities**
  - Submit through Commission Secretary
  - Get authorization from Council Committee
  - Upon approval, submitted by Commission Secretary on City's behalf

COUNCIL POLICY 0-4: SUBCOMMITTEES

- **Standing Committees**
  - Made solely of less than a quorum of the Commission
  - Continuing subject matter jurisdiction or meeting schedule fixed by Commission
  - Brown Act body
  - Generally not allowed unless pre-approved by Council Committee
- **Ad Hoc (Temporary) Committees**
  - Made solely of less than a quorum of the Commission
  - Specific short term tasks or projects
  - Less than 6 months

SAN JOSE CITY CHARTER

- **Article X: Boards and Commissions**
- **Establishes Planning Commission, Civil Service Commission, and Salary Setting Commission**
- **Allows Council to create such other boards and commissions as it requires, and grant them such functions, powers and duties as are consistent with the Charter**
- **All boards and commissions created by Council are subject to the direction and supervision as specified by Council**

SAN JOSE MUNICIPAL CODE 2.08

- **Expressly sets forth the Commission's Functions, Powers, and Duties**
- **Excused Absences**
  - **Member's illness; illness or death of member's spouse, domestic partner, parent, child, sibling or dependent**
  - **Member is away on authorized City business**

SAN JOSE MUNICIPAL CODE 2.08

- Automatic Resignation if
- Unexcused absences from
  - Any 3 consecutive regular meetings, or
  - More than 20% of total number of regular meetings in any calendar year
- Can be reappointed by Council if Council finds there was good excuse for absences and in City's best interests

SAN JOSE MUNICIPAL CODE 2.08

- Quorum
- Majority of the total number of seats, whether filled or vacant
- Example: 11 member commission; 6 is a quorum

SAN JOSE MUNICIPAL CODE 2.08

- **Voting* (§ 2.08.095)**
- **Requires affirmative vote of at least a majority of those present, as long as there is a quorum**
- **Example: 11 member commission; 6 is a quorum; 7 present; Vote of 4 passes**

***Board of Fair Campaign & Political Practices, Civil Service Commission, DCAC, Retirement Boards and Salary Setting Commission have own voting rules**

RESOURCES

- **City Clerk website:** www.sanjoseca.gov/index.aspx?nid=145
- **Understanding the Role of Chair:** http://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair_nov_2012_3.pdf

Questions & Answers

Thank you for participating in this training.

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

REVISED APRIL 2016

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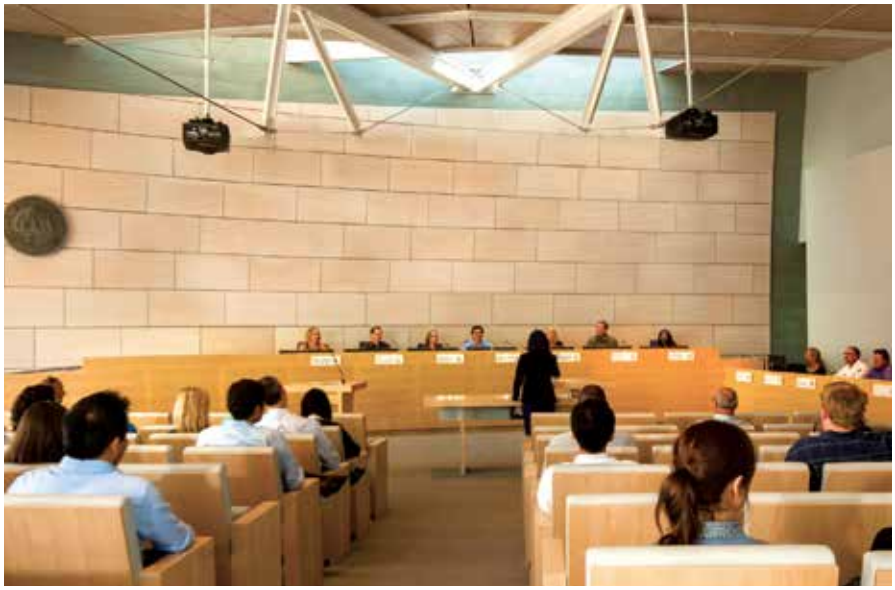

Open & Public V

A GUIDE TO THE RALPH M. BROWN ACT

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

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

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

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

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

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

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

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

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

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

Broad coverage

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

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

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

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

Narrow exemptions

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

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

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

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

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

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

Public participation in meetings

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

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

Controversy

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

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

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

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

Beyond the law — good business practices

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

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

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

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

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

Achieving balance

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

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

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

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

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

Historical note

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

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

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

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

ENDNOTES:

1 California Government Code section 54950

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

3 California Government Code section 54953(a)

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

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

6 California Government Code section 54953.7

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

Chapter 2

LEGISLATIVE BODIES

Chapter 2

LEGISLATIVE BODIES

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

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

A "legislative body" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ENDNOTES:

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

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

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

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

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

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

7 California Government Code section 54952.1

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

9 California Government Code section 54952(b)

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

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

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

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

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

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

16 California Government Code section 54952(d)

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

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

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

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

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

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

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Chapter 3

MEETINGS

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

Brown Act meetings

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

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

Six exceptions to the meeting definition

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

Individual Contacts

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

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

Conferences

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

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

Community Meetings

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

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

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

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

Other Legislative Bodies

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

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

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

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

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

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

Standing Committees

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

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

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

Social or Ceremonial Events

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

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

Grand Jury Testimony

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

Collective briefings

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

Retreats or workshops of legislative bodies

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

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

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

Serial meetings

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Informal gatherings

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

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

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

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

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

Technological conferencing

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

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

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

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

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

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

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

Location of meetings

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

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

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

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

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

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

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

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

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

Endnotes:

1 California Government Code section 54952.2(a)

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

3 California Government Code section 54954(a)

4 California Government Code section 54956

5 California Government Code section 54956.5

6 California Government Code section 54955

7 California Government Code section 54952.2(c)

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

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

10 California Government Code section 54953.1

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

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

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

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

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

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

17 California Government Code section 54957.5(a)

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

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

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

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

22 California Government Code section 54953

23 California Government Code section 54954(b)

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

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

26 California Government Code section 54954(c)

27 California Government Code section 54954(d)

28 California Government Code section 54954(e)

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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

Agendas for regular meetings

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

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

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

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

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

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

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

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

Mailed agenda upon written request

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

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

Notice requirements for special meetings

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

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

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

Notices and agendas for adjourned and continued meetings and hearings

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

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

Notice requirements for emergency meetings

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

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

Notice of compensation for simultaneous or serial meetings

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

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

Educational agency meetings

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

Notice requirements for tax or assessment meetings and hearings

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

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

Non-agenda items

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

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

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

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

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

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

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

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

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

Responding to the public

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

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

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

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

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

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

The right to attend and observe meetings

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

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

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

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

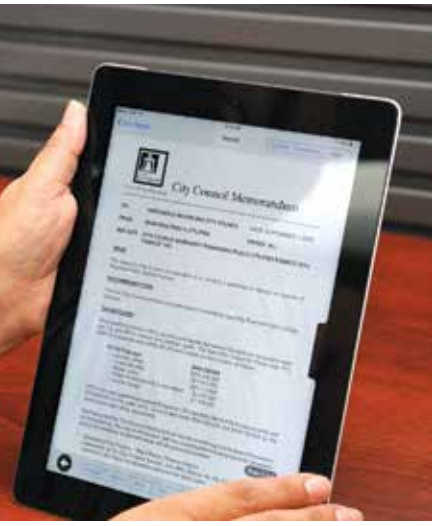
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

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

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

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

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



Records and recordings

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

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

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

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

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

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

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

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

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

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

The public's place on the agenda

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

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

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

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

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

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

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

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

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

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

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

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

Endnotes:

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

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

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

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

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

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

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

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

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

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

11 California Government Code section 54954.1

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

13 California Government Code section 54955

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

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

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

20 California Education Code section 35145.5

21 California Government Code section 54954.6

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

23 California Government Code section 54954.2(b)

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

25 California Government Code section 54953.3

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

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

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

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

31 California Government Code section 54957.9.

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

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

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

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

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

Chapter 5

CLOSED SESSIONS

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CLOSED SESSIONS

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

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

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

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

Agendas and reports

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

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

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

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

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

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

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

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

Litigation

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

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

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

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

Existing litigation

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

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

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

Anticipated exposure to litigation against the local agency

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

Anticipated initiation of litigation by the local agency

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

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

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

Real estate negotiations

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

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

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

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

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

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

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

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

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

Public employment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Labor negotiations

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

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

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

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

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

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

Labor negotiations — school and community college districts

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

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

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

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

Other Education Code exceptions

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

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

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

Joint Powers Authorities

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

License applicants with criminal records

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

Public security

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

Multijurisdictional law enforcement agency

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

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

Hospital peer review and trade secrets

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

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

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

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

Other legislative bases for closed session

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

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

Who may attend closed sessions

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

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

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

The confidentiality of closed session discussions

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

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

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

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

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

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

ENDNOTES:

1 California Government Code section 54962

2 California Constitution, Art. 1, section 3

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

4 California Government Code section 54957.1

5 California Government Code section 54954.5

6 California Government Code section 54954.2

7 California Government Code section 54954.5

8 California Government Code sections 54956.9 and 54957.7

9 California Government Code section 54957.1(a)

10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

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

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

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

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

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

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

18 California Government Code section 54956.9(g)

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

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

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

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

25 California Government Code sections 54956.8 and 54954.5(b)

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

27 California Government Code section 54957(b)

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

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

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

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

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

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

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

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

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

37 California Government Code section 54957

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

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

40 California Government Code section 54957.6

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

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

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

44 California Government Code section 3549.1

45 California Government Code section 3540

46 California Government Code section 3547

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

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

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

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

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

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

64 Government Code section 54963

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

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

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

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

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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

Chapter 6

REMEDIES

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REMEDIES

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

Invalidation

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

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

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

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

Applicability to Past Actions

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

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

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

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

Civil action to prevent future violations

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

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

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

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

Costs and attorney's fees

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

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

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

Criminal complaints

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

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

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a majority of the legislative body to make a positive or negative decision.[22] If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.[23] In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]

As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.[25] There is no case law to support this view; if anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.[26]

Voluntary resolution

Arguments over Brown Act issues often become emotional on all sides. Newspapers trumpet relatively minor violations, unhappy residents fume over an action, and legislative bodies clam up about information better discussed in public. Hard lines are drawn and rational discussion breaks down. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body. There are times when it may be preferable to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

At bottom, agencies that regularly train their officials and pay close attention to the requirements of the Brown Act will have little reason to worry about enforcement.

ENDNOTES:

1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); 54956 (special meetings); and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.

2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198

3 California Government Code section 54960.1 (b) and (c)(1)

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

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

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

7 Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)

8 Government Code Sections 54960.2(a)(1), (2)

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

16 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6

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

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

19 California Government Code section 54960.5

20 California Government Code section 54959. A misdemeanor is punishable by a fine of up to $1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.

21 California Government Code section 54959

22 California Government Code section 54952.6

23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

25 California Government Code section 1222 provides that "[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor."

26 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.

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

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RES NO 77891

City of San José, California

COUNCIL POLICY

TITLE	PAGE	POLICY NUMBER
Consolidated Policy Governing Boards and Commissions	1 of 29	0-4
EFFECTIVE DATE: August 9, 2016	**REVISED DATE: August 9, 2016**	

APPROVED BY COUNCIL ACTION: August 28, 1984, Item 8(b)(2); August 28, 1990, Item 7d(4); November 20, 1990, Item No. 7d(1); February 19, 1991, Item No. 7(b)(6); August 1, 1991, Item No. Item 7(d)(4); August 9, 2016, Item 3.3(a)

BACKGROUND

This policy consolidates Council Policy 0-4 (Consolidated Board and Commission Policies) and Council Policy 0-36 (City Council / Commission Code of Conduct), former Council Policy 0-20 (Appointment of City Employees and Council Assistants to Boards and Commissions), and former Council Policy 0-22 (Political Involvement of Boards, Commissions and Committees and their Members), and incorporates portions of Council Policies 0-15 (Code of Ethics for Officials and Employees of the City of San Jose). It is intended as a comprehensive selection of policies as they relate to Boards and Commissions and updated as part of the Board and Commission Consolidation approved by City Council on May 7, 2013.

City of San Jose Boards and Commissions are established in order to provide independent recommendations to Council or, in the context of quasi-judicial boards such as the Planning Commission, Civil Service Commission, Board of Fair Campaign and Political Practices, and Appeals Hearing Board, to make independent decisions and take administrative actions. The Boards and Commissions play an important role by being visible in the community and bringing a broad representation of ideas into the process.

The City Charter provides that, in addition to those Boards and Commissions established by the City Charter, the City Council may create such other Boards and Commissions as in its judgment are required, and grant them such functions, powers and duties as are consistent with the City Charter. This Policy intends to fully define the policies and customs as related to those Boards and Commissions.

This Policy only applies to Boards and Commissions whose members are appointed by the City Council pursuant to the City Charter and San José Municipal Code. Therefore, it does not apply to the San José Arena Authority Board of Directors, Deferred Compensation Advisory Committee, Mayor's Gang Prevention Task Force, Federated Retirement Board, Police and Fire Retirement Board, and work2future Board.

SECTIONS

DEFINITIONS

For purposes of this Policy, the following definitions are in effect throughout:

Appointee – An individual who has been appointed by the City Council to a Board or Commission, but has not been sworn in as a Commissioner by the City Clerk.

Charter Commission – The following commissions established by and whose membership, powers and duties are defined in the City Charter, Article X, Boards and Commissions: Planning Commission, Civil Service Commission, and Salary Setting Commission.

Council Liaison – See Section IV.B of this Policy.

Council Nominated Commission – Commissions whose members without special eligibility requirements are nominated by each Council Member, including the Mayor, and appointed by City Council pursuant to San José Municipal Code Section 2.08.180. A listing of current Council Nominated Commissions is included in Appendix A of this Policy.

Council Appointment Advisory Commission Nominated Commission – Commissions whose members with special eligibility requirements are nominated by the Council Appointment Advisory Commission. See Appendix A of this Policy.

SECTION I: RECRUITMENT, SELECTION, APPOINTMENT, AND RESIGNATION

Purpose

This Policy establishes a systematic procedure for accepting and reviewing applications from persons interested in serving on Boards and Commissions and provides members of the City Council a process to make nominations to the various Boards and Commissions for appointment by the City Council.

A. PROCESS AND PROCEDURE

1. Roster: A current roster of Board and Commission members will be maintained by the City Clerk. The roster shall show the first appointment date of each Commissioner, the current term expiration date, and whether the Commissioner is eligible for reappointment.

2. Applications: The City Clerk will provide an application form to all persons wishing to serve on a Commission. Those persons wishing to serve on a Commission, including current Commissioners who wish to be reappointed, must file an application. Applicants who were not appointed to a Board or Commission will have their applications maintained on file in the City Clerk's Office for a period of one year from the date of application. During that year, the applicant may be eligible for appointment to an unanticipated vacancy on the Board or Commission for which they applied. If so eligible, the City Clerk will contact the applicant to confirm their interest and obtain any

changes to their application. The City Clerk may continue to accept applications for Boards and Commissions while there are no vacant positions in order to have an applicant pool to fill unanticipated vacancies.

3. City Residency Requirement: Except as provided below, all applicants to Boards and Commissions must be San José residents. Except for Charter Commissions and the Neighborhoods Commission, in specific cases where a qualified San José resident has not applied to fill the vacancy, the Council may appoint a non-resident.
   a. Residents of land annexed by the City of San José are considered San José residents. Residents of unincorporated County of Santa Clara land are not considered San José residents.
   b. Except for Charter Commissions and the Neighborhoods Commission, if a Commissioner moves out of the City of San José with less than six months left on their term, they shall be allowed to finish their term; otherwise, Commissioners must retain residency in the City of San José during their term of office.
   c. If a Commissioner moves out of the City of the San José with six or more months left on their term, the commissioner shall be deemed automatically resigned.

4. Vacancies: The City Clerk shall notify the City Council via memorandum of vacancies and recruitments occurring within the next sixty days. Copies of such notices shall be sent to the secretaries of Boards or Commissions listed therein. When a vacancy exists, the Clerk shall place a notice of said vacancy on the City Calendar and Website for viewing by the public.

5. Terms of Office: The following term limits apply to Boards and Commissions other than the Charter Commissions and Youth Commission. Under San José Municipal Code Section 2.08.150, members of Council Nominated Commissions and the Neighborhoods Commission, except for the Youth Commission, shall serve for a term of four years and are eligible for reappointment at the expiration of their first term for one additional four-year term. Members of the Youth Commission shall serve for a term of two years and are eligible for reappointment at the expiration of their first term for one additional two-year term. Should a Commissioner be off a commission for at least one full term (four years, or two years for the Youth Commission), the Commissioner shall be eligible for a new appointment to that Commission.

6. Limited to Single Legislative Body: No commissioner shall serve on more than one commission at a time. Should a commissioner seek appointment to another commission, upon his/her new appointment, the commissioner shall be deemed automatically resigned from his or her original commission. Other than Standing Committees of their respective commission, no commissioner shall serve on “Other Advisory Entities” as defined by the Consolidated Open Government and Ethics Resolution.

7. Review of Applications: Applications to all Commissions except Youth Commission will be reviewed by the Office of the City Attorney for potential conflict of interest and Department of Planning, Building, and Code Enforcement for any pending code violations.

8. Appointment Process for Charter Commissions, Appeals Hearing Board and Board of Fair Campaign and Political Practices. The City Council holds public interviews of the applicants according to the following procedure:
   a. On or before the occurrence of a vacancy, the Commission Secretaries will prepare and send to the City Clerk's Office for distribution a background memo on the Commission which should include any special eligibility requirements, needs, or areas of expertise needed for more equitable representation on the Commission. The memo should include a statement setting forth attendance, residency information, and compliance with City requirements (e.g., commission training, state-mandated training, Form 700 filing) on any incumbents eligible for reappointment.
   b. The City Clerk shall post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.
   c. Upon close of the vacancy notice period, the City Clerk shall forward a copy of the applications and Commission Secretary's background memos, if any, to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications.
   d. Upon close of the vacancy notice period, the City Clerk will provide full application packages to each member of the City Council. The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement Code memo, Commission Secretary's background memos, and any other information as necessary.
   e. After receipt of the full application package, each Council Member, including the Mayor, shall notify the Clerk in writing of the applicants he/she wishes to interview. If four Council Members indicate they would like to interview the same applicant, the Clerk shall contact the applicant to notify him/her of the time, place and date of the interview, which shall occur during an open meeting of the City Council.
   f. At the Council meeting at which the interviews are held, the Clerk shall supply the Council Members with a ballot, which may be electronic, containing the names of all the applicants to be interviewed. Upon completion of the interviews, each Council Member shall mark his/her selection of applicant on the ballot. The Clerk shall publicly read the votes of the Council Members, and the applicant(s) receiving the most Council votes (six or more) shall be appointed. If there are two or more vacancies, and more than two applicants receive six or more votes, then the applicants receiving the highest number of votes shall be appointed. In the case of a tie, a second balloting shall take place.
   g. After the Council makes an appointment to a Board or Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

9. Appointment Process for Council Nominated Commissions (See Appendix A for a complete list)

   a. Regularly Scheduled Vacancies for Seats Nominated by Council Members: The following appointment process applies to all regularly scheduled vacancies for seats for Council Nominated Commissions specifically referencing 2.08.180.
      i. On or before the occurrence of a vacancy, the City Clerk shall notify the Council Member responsible for the nomination of that seat.
      ii. The Commission Secretaries will prepare and send to the City Clerk's Office for distribution a background memo on the Commission which should include any special eligibility requirements, needs, or areas of expertise needed for more equitable representation on the Commission. The memo should include a statement setting forth attendance, residency information, and compliance with City requirements (e.g., commission training, state-mandated training, Form 700 filing) on any incumbents eligible for reappointment.
      iii. The City Clerk shall post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.
      iv. Upon close of the vacancy notice period, the City Clerk's Office shall forward a copy of the applications to the Department staff liaison to the Commission.
         1. Within 7 days of receipt, the Department staff liaison may submit a memo to the City Clerk with its evaluation of the applicants based on the powers and duties of the Commission, any special eligibility requirements, and experience, background and expertise of the applicants.
         2. Within 7 days of receipt, the Department staff liaison to the Housing and Community Development Commission shall complete a preliminary review of the applications, including but not limited to, completion of the Low- or Moderate-Income Representative Certification Statement and determining whether the applicant meets the required special eligibility requirements in Section 2.08.2820 of the Municipal Code. The Department staff liaison shall submit the results of its review in a memo to the City Clerk's Office.
      v. The City Clerk shall then forward a copy of the applications, Department staff liaison memo, and Commission Secretary's background memos, if any, to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications and memo.
      vi. After receipt of the conflicts of interest and code review memos, the City Clerk will provide full application packages to each member of the City Council making appointments. The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement memo,

Commission Secretary's background memos, and any other information as necessary.

vii. After receipt of the full application package, each Council Member, including the Mayor, shall submit their nominations for approval by the City Council. Each Council Member, including the Mayor, may interview applicants prior to submitting their nominations.

viii. In the event that a Council Member or the Mayor does not provide a nominee within the specified deadline, chooses to delegate their nomination to the Council Advisory Appointment Commission, or request additional recruitment, the Council Advisory Appointment Commission shall be authorized to submit a nominee to the City Council.

ix. After Council makes an appointment to a Board or Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

b. <u>Vacancies for Seats Nominated By Council Appointment Advisory Commission</u>: The following appointment process applies to seats on Council Nominated Commissions with special eligibility requirements that are nominated by the Council Appointment Advisory Commission:

i. On or before the occurrence of a vacancy, the City Clerk shall notify the Commission Secretary. The Commission Secretary will prepare and send to the City Clerk's Office for distribution a background memo on the requirements for those seats needing to be filled which should include any special eligibility requirements, needs, or areas of expertise needed for more equitable representation on the Commission. The memo should include a statement setting forth attendance, residency information, and compliance with City requirements (e.g., commission training, state-mandated training, Form 700 filing) on any incumbents eligible for reappointment.

ii. The City Clerk shall post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.

iii. Upon close of the vacancy notice period, the City Clerk's Office shall forward a copy of the applications to the Department staff liaison to the Commission.

1. Within 7 days of receipt, the Department staff liaison may submit a memo to the City Clerk with its evaluation of the applicants based on the powers and duties of the Commission, any special eligibility requirements, and experience, background and expertise of the applicants.
2. Within 7 days of receipt, the Department staff liaison to the Housing and Community Development Commission shall complete a preliminary review of the applications, including but not limited to, completion of the Low- or Moderate-Income Representative Certification Statement and determining whether the applicant

meets the required special eligibility requirements in Section 2.08.2820 of the Municipal Code. The Department staff liaison shall submit the results of its review in a memo to the City Clerk's Office.

iv. The City Clerk shall then forward a copy of the applications, Department staff liaison memo, and Commission Secretary's background memos, if any, to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications and memo.

v. After receipt of the conflicts of interest and code review memos, the City Clerk will provide full application packages to the Council Advisory Appointment Commission for review. The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement memo, Commission Secretary's background memos, Department staff liaison memo, and any other information as necessary.

vi. After receipt of the full application package, the Council Advisory Appointment Commission will interview applicants, select their nominee and submit their nomination to the City Council for final approval.

vii. After Council makes an appointment to a Board or Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

c. Unanticipated Vacancies for Seats Nominated by Council Members. The following appointment process applies to all unanticipated vacancies for seats for Council Nominated Commissions specifically referencing Section 2.08.180 of the Municipal Code.

i. Upon receipt of a Board or Commission member resignation, the City Clerk shall notify the Council Member for the represented district of the unanticipated vacancy, and post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.

ii. Upon close of the vacancy notice period, the City Clerk's Office shall forward a copy of the applications to the Department staff liaison to the Commission.

1. Within 7 days of receipt, the Department staff liaison may submit a memo to the City Clerk with its evaluation of the applicants based on the powers and duties of the Commission, any special eligibility requirements, and experience, background and expertise of the applicants.
2. Within 7 days of receipt, the Department staff liaison to the Housing and Community Development Commission shall complete a preliminary review of the applications, including but not limited to,

completion of the Low- or Moderate-Income Representative Certification Statement and determining whether the applicant meets the required special eligibility requirements in Section 2.08.2820 of the Municipal Code. The Department staff liaison shall submit the results of its review in a memo to the City Clerk's Office.

iii. The City Clerk shall then forward a copy of the applications and Department staff liaison memo to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications and memo.

iv. After receipt of the conflicts of interest and code review memos, the City Clerk will provide full application packages to each member of the City Council making nominations to the vacant seat(s). The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement memo, Commission Secretary's background memos, Department staff liaison memo, and any other information as necessary. Each Council Member, including the Mayor, may interview applicants prior to submitting their nominations.

v. After receipt of the full application package, if the Council Member chooses to nominate one of the applicants, the nomination will be submitted to the City Council for approval.

vi. If the Council Member chooses not to nominate any of the applicants, they may conduct outreach for additional applicants or request the City Clerk to conduct additional recruitment.

vii. In the event that a Council Member or the Mayor does not provide a nominee within the specified deadline, chooses to delegate their nomination to the Council Advisory Appointment Commission, or request additional recruitment, the Council Advisory Appointment Commission shall be authorized to submit a nominee to the City Council.

viii. If no candidate is nominated, the vacancy will be filled during the next normal Board and Commission recruitment period.

ix. After Council makes an appointment to a Board or Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

x. <u>Less Than Six Month Term</u>: If a Commissioner is nominated to fill an unexpired term with less than six months remaining, the City Council may choose to additionally appoint him/her to the following four year term.

10. Appointment Process for Neighborhoods Commission

    a. Regularly Scheduled Vacancies for Seats Nominated by Neighborhood Groups: The following appointment process applies to all regularly scheduled vacancies for seats for Neighborhoods Commission.
        i. The Department staff liaison to the Commission shall obtain approval from the City Council of the rules developed by the Commission for the caucus process, in accordance with Section 2.08.3440.A of the Municipal Code.
        ii. The City Clerk shall post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.
        iii. Upon close of the vacancy notice period, the City Clerk shall forward a copy of the applications to the Department staff liaison to the Commission for a preliminary review of applicants, including, but not limited to, District residency verification and identification, and application completeness. Within 7 days of receipt, the Department staff liaison shall submit the results of its review as a Department staff liaison memo to the City Clerk's Office.
        iv. The City Clerk shall then forward a copy of the applications and Department staff liaison memo to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications and memo.
        v. After receipt of the conflicts of interest and code review memos, the City Clerk will provide full application packages to the Department staff liaison to the Commission, to provide to the neighborhood groups during their caucus process. The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement memo, Department staff liaison memo, and any other information as necessary.
        vi. After receipt of the full application package, and in accordance with the caucus process in Section 2.08.3440.A-C of the Municipal Code, the Department staff liaison shall submit the nominations of the neighborhood groups for approval by the City Council.
        vii. After Council makes an appointment to the Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

    b. Unanticipated Vacancies Nominated By Council Appointment Advisory Commission: The following appointment process applies to unanticipated vacancies for seats on the Neighborhoods Commission:

i. Upon receipt of a resignation, the City Clerk shall post a vacancy notice on the City Clerk's website, San José Public Libraries, and City community centers.
ii. Upon close of the vacancy notice period, the City Clerk shall forward a copy of the applications to the Department staff liaison to the Commission for a preliminary review of applicants, including, but not limited to, District residency verification and identification, and application completeness. Within 7 days of receipt, the Department staff liaison shall submit the results of its review as a Department staff liaison memo to the City Clerk's Office.
iii. The City Clerk shall then forward a copy of the applications and Department staff liaison memo to the City Attorney for a conflicts review and Department of Planning, Building, and Code Enforcement for review of code actions. The City Attorney and Department of Planning, Building, and Code Enforcement will prepare and provide the City Clerk with respective memos regarding the applicants within 14 days after receipt of the applications and memo.
iv. After receipt of the conflicts of interest and code review memos, and in accordance with the appointment process in Section 2.08.3440.D of the Municipal Code, the City Clerk will provide full application packages to the Council Advisory Appointment Commission for review. The full application packages will contain the following documents: Commission applications, City Attorney memo, Department of Planning, Building, and Code Enforcement memo, Department staff liaison memo, and any other information as necessary.
v. After receipt of the full application package, the Council Advisory Appointment Commission will interview applicants, select their nominee and submit their nomination to the City Council for final approval.
vi. After Council makes an appointment to the Commission, the City Clerk's Office shall notify the appointee and the Commission Secretary of the appointment and make arrangements for an Oath of Office, Code of Ethics Agreement, and any additional requirements to be signed and completed. The Commission Secretary shall notify the appointee that he/she shall not act in their capacity as a Board Member or Commissioner until an Oath of Office and Code of Ethics Agreement have been signed.

11. Resignations:
    a. Voluntary Resignation: Voluntary resignations from Boards and Commissions shall be submitted in writing to the City Clerk and Commission Secretary. Resignations are effective on the date submitted to the City Clerk or Commission Secretary, unless a different date is noted on the resignation. Resignations cannot be rescinded or revoked.
    b. Automatic Resignation: Commission Secretaries will notify the City Clerk of vacancies occurring due to absences pursuant to the provision of the San José Municipal Code Section 2.08.060 that automatically deem a seat vacant.

B. CITY EMPLOYEES

1. Because City Boards and Commissions are intended to provide the City Council with a perspective different and additional to that provided by staff and other persons retained to provide that advice, unless a particular Board or Commission is required by the San José Municipal Code or Resolution of the Council to have staff representatives appointed thereto, no City employee or City intern, paid or unpaid, shall be appointed to any City Board or Commission.
2. Notwithstanding the above, Youth Commissioners may also serve the City as a paid or unpaid intern.
3. Former or retired City employees shall not be appointed to the Civil Service Commission.

SECTION II: REQUIREMENTS FOR BOARD MEMBERS AND COMMISSIONERS UPON APPOINTMENT

Purpose

Based upon various local, state, and federal laws and requirements, Board Members and Commissioners are required to complete and have on file with the Office of the City Clerk certain paper work and complete certain trainings in order to serve on a Board or Commission. The City Clerk's Office will notify the Commission Secretary of commissioners who fail to complete any requirements.

Policy

1. Oath of Office: Upon appointment and reappointment, Commissioners and Board Members are required to file a current oath of office with the Office of the City Clerk (Article 20, Section 3 of the California Constitution). ***A new oath of office must be administered for each term of office***.
2. Code of Ethics: Commissioners and Board Members shall read and sign a Code of Ethics Statement. (San José City Council Policy 0-15).
3. Form 700 / Statement of Economic Interest: The following Board Members and Commissioners are required to file a Statement of Economic Interest, Form 700.
    a. Any Commission designated in the City's conflict of interest code;
    b. Pursuant to Government Code 87200, Planning Commissioners; and
    c. Any Commissions added to Government Code 87200 following approval of this Policy.
4. AB 1234 Ethics Training: Commissioners who receive compensation, salary, stipend or reimbursement of expenses are required to complete state mandated ethics training. Said training must be for a minimum of two hours, and completion certificates must be filed with the Office of the City Clerk within 90 days of appointment. Such training must be completed every two years.
5. City Training: Within the first year of appointment, Commissioners will be required to complete a mandatory training session covering, but not limited to, the City Charter, the San José Municipal Code Section 2.08, City Council Policies related to Boards and Commissions, City Policies and Procedures, Brown Act and Consolidated Open Government and Ethics Resolution, Statement of Economic Interest Disclosure

requirements, and Parliamentary Procedures. The training will be coordinated by the City Clerk's Office with the City Attorney's Office and Boards and Commission staff.

SECTION III: BOARD AND COMMISSION GOVERNANCE AND OPERATIONS

Purpose and Application

Standardized Rules and Regulations have been established to better serve the public in that any resident, business, or other interested party appearing before a City Commission may know what to expect regardless of the board or commission. This process standardization was ordered as part of the Boards and Commissions Consolidation approved by City Council on May 7, 2013.

Policy

A. BYLAWS

All City Commissions, except the Airport Commission, Appeals Hearing Board, Civil Service Commission, Salary Setting Commission, Board of Fair Campaign and Political Practices, and Planning Commission, will operate under a standardized set of Bylaws developed by the City Clerk. Any deviation from the standardized Bylaws must be approved by the Rules and Open Government Committee, or other designated Council Committee, of the City Council. See Appendix B for Commission Bylaws Template.

B. ANNUAL WORKPLAN, BUDGET AND REPORT

Each fiscal year, all City Commissions except for Charter Commissions and the Appeals Hearing Board, shall submit their annual workplan of activities to be undertaken, budget of personal and non-personal costs, and annual report of its accomplishments to the Rules and Open Government Committee or other designated Council Committee for approval, as delegated by the City Council pursuant to this Policy. Staff shall provide a cover memo indicating whether the workplan corresponds with the Department's workplan. The Commission's annual workplan, budget and annual report shall follow the standard template format provided by the City Clerk. Commissions shall not include items in the workplan that would extend their scope beyond the functions, powers, and duties granted to or bestowed upon them by San José Municipal Code Chapter 2.08.

C. SUBCOMMITTEES (STANDING, AD HOC AND TEMPORARY COMMITTEES)

1. Standing Committees: Unless approved by the Rules and Open Government Committee or other designated Council Committee, standing committees, which are subcommittees with a continuing subject matter jurisdiction or a meeting schedule fixed by formal action of the Commission are not allowed under the Commission Bylaws as they are Brown Act bodies that require additional staff support. The Board or Commission requesting the creation of a standing committee shall submit a formal request to the Rules and Open Government Committee that includes justification for the standing committee as well as a time and budget analysis by the Department staff in order to assist the Rules and Open Government Committee with their decision. The City Clerk shall provide a format for the standing committee request. Standing committees shall not meet more often than its Board or Commission. Standing committees must prepare and maintain Action Minutes.

2. Ad Hoc or Temporary Committees: Limited term ad hoc or "temporary" committees, which are comprised of less than a quorum of members of the Commission, are allowed for specific short term tasks or projects with a narrow scope and shall not last longer than six months. Ad hoc committees are not subject to the notice and posting requirements of the Brown Act. The purpose for forming an ad hoc committee must be defined and the scope of the ad hoc committee must be within the functions, powers and duties of the commission as outlined in the San José Municipal Code and as approved by the Commission Secretary. Under no circumstances shall ad hoc committees be formed to bypass the rules and laws of this Council Policy, the Brown Act, or the City Council's Consolidated Open Government and Ethics Resolution.

3. Subcommittees shall only be formed by and composed solely of members of its parent Board or Commission. Members of the public or former commissioners may not sit on subcommittees as voting or nonvoting members or officers of the subcommittee.

4. Commission members shall not be required to serve on subcommittees.

D. COMMISSION OPERATIONS

1. The California Ralph M. Brown Act (Gov't Code § 54950 et seq.) applies to Boards and Commissions except where stricter standards are adopted by the City of San José pursuant to its Consolidated Open Government and Ethics Resolution . At no point will a policy be enacted that reduces the standards of the Brown Act.

2. The Commission shall not require commission members to perform additional duties outside what is required under San José Municipal Code section 2.08. The Commission may request its members to perform outside duties, but cannot penalize a Commission member who cannot perform these additional duties.

3. Members of the public or former commissioners may not sit on the Commission as voting or nonvoting members or officers of the Commission. Former Commission members shall be treated as members of the public. Emeritus members shall not be allowed.

E. MEETING SCHEDULE

1. Except for Charter Commissions, the frequency and schedule of meetings shall be determined by the Board or Commission's workplan, as approved by the Rules and Open Government Committee, and align with the corresponding City Department, City Service Area, and Council Committee to allow flexibility in scheduling meetings.

2. Commission Meetings may not be cancelled or rescheduled due to personal conflicts in the Commissioners' personal schedules.

3. Meetings will be conducted according to Robert's Rules of Order.

F. AGENDAS

1. A standardized agenda format will be provided to Commission Secretaries by the City Clerk and should be used for all agendas, for regular meetings and/or subcommittee meetings. Any proposed change to this format by a Commission must be approved by the Rules and Open Government Committee.

2. Agendas must include the following:
   a. Commission Name
   b. The Meeting Date and Time
   c. Meeting Location
   d. Description of each item of business to be transacted or discussed
   e. Public Comments
   f. Public Record

3. Agenda Distribution Policy:
   a. Email: Agendas will be distributed via email to commissioners at the City-provided email address.
   b. Hard Copy: If a Commissioner requires hard copies of the agenda and related materials, the Commissioner must put the request in writing to the Commission Secretary. Requests for hard copies of materials will be effective until the end of the calendar year in which the request was submitted. Requests must be renewed annually. The Commission Secretary will place hard copies in outgoing first-class mail on the same day the agenda is posted, unless the agenda is posted after 3:00 p.m., in which case the agenda will be mailed the following business day. There is no guarantee that the hard copy will arrive at the Commissioner's address prior to the meeting. Alternatively, the Commissioner may pick up a hard copy in person at the office of the Commission Secretary.

4. Agendas and related materials for regular meetings shall be posted seven (7) days in advance of the meeting per the City's Consolidated Open Government and Ethics Resolution. Agendas shall also be posted at City Hall and on the City's website. An amended agenda making administrative, non-substantive changes may be posted no later than three days before the meeting.

5. Agendas and related materials will be posted online and will contain a link to all of the documents referenced or distributed to members of the body. Quasi-judicial Commissions are not obligated to post online any documents presented at the time of an evidentiary hearing.

G. MEETINGS

1. Commission Meetings must be audio recorded and the recording must be maintained for two years. Planning Commission meetings must also be video recorded and the recording must be maintained for two years. The Commission Secretary is responsible for maintaining the recording(s) for the two year retention period.

2. Members of Boards and Commissions must follow the attendance rules set forth in Section 2.08.060 of the San José Municipal Code. Attendance at a regular meeting for purposes of Section 2.08.060 of the Municipal Code means attending at least 50% of the duration of the entire meeting. Attending less than 50% of the duration of the entire meeting is considered an absence for purposes of Section 2.08.060 of the Municipal Code. In the case of an excused absence, Commissioners should notify the Commission Secretary of their excused absence as soon as possible.

3. All members of Boards and Commissions will adhere to the Declaration of Conflict of Interest Policy set forth in the Council's Consolidated Open Government and Ethics Resolution.

4. Public meetings of a Board or Commission held in any location will follow the Code of Conduct for Public Meetings in the Council Chambers and Committee Rooms set forth in Council Policy 0-37.

5. Commission Secretaries will be expected to:
    a. Be a member of City staff
    b. Attend all meetings, including subcommittee meetings
    c. Prepare the meeting agendas in accordance with the approved Commission workplan, if any
    d. Ensure meetings are effectively organized and recorded
    e. Maintain effective records and administration, including the collection and retention of records submitted at meetings, and drafting meeting minutes
    f. Manage communication and correspondence

H. MINUTES

Minutes are the official written record of what transpires during a meeting and serve as the permanent record of actions taken and staff direction.

1. Minutes will be taken in "Action Minute" format. Action Minutes include only a brief summary of the public comment and action taken by the Commission.

2. Minutes should include the following:
    a. What type of meeting: Regular, Special, Adjourned, et al.
    b. The name of the Commission
    c. Date and Location of the meeting.
    d. The word "Minutes"
    e. Time the meeting convened
    f. Names of commissioner and staff persons present
    g. Public Comments
    h. Approval of Minutes
    i. Items on the agenda and actions taken for each item including, but not limited to, motions, direction to staff, brief summary of discussion, as well how each member voted, who made the motion and the second.
    j. Time the meeting adjourned
    k. Name of individual preparing the minutes.

3. Commission Secretaries will be expected to follow the standardized "Action Minutes" format provided by the City Clerk.

4. Draft Action Minutes shall be posted within 10 days after the meeting.

SECTION IV: CODE OF CONDUCT

A. MEMBERS OF BOARDS AND COMMISSIONS

1. All Boards and Commissions
   All Commissioners should conduct meetings in a dignified and courteous manner. No bias or prejudice against any individual or group of people should be manifested by any Commissioner or condoned by any Commission.

   The following Code of Conduct applies to all Boards and Commissions.
   a. All Commissioners shall be professional, respectful and courteous to staff and the public.
   b. When speaking or writing publicly on matters within the purview of his or her Commission, unless a Commissioner has been authorized to speak on behalf of the Commission or the Commissioner is speaking on behalf of a position that the Commission has taken by formal action, the Commissioner should make very clear that he or she is speaking on his or her own behalf and not on behalf of the Commission.
   c. No Commissioner shall use his or her Commission title or speak or write as a Commissioner except when speaking on behalf of the Commission. Except when a Commissioner is speaking on behalf of the Commission, no Commissioner shall identify him or herself as a Commissioner without making clear that he or she is not speaking on behalf of the Commission.
   d. City business cards shall be provided to those Commissioners where requested by the Commission, as approved by the Commission Secretary based on Commission needs for community outreach. Information in the business cards must contain at a minimum: the name of the Commissioner, the title of the Commissioner, and the name of the Commission. Department staff will determine the additional information to be pre-printed on the business card. Such cards shall only be used when the Commissioner is on official business.
   e. City email addresses shall be provided to all Commissioners. Such email addresses shall only be used for official City business. Commissions shall not use private email addresses for City business.
   f. Use of City stationery must be limited to official Commission business. All correspondence concerning the Commission's business should be processed by the Commission Secretary.
   g. Commission recommendations to the City Council must be recommendations of the Commission as a whole, and not subject to undue influence by Council Liaison, Council Member, City staff, or any outside agency.
   h. Individual Commissioners are free to discuss any issues and concerns with the Council Liaisons, Council District representative or any Council office. However,

Commissioners cannot assign themselves as "liaison" to the various Council members and must take care that contact with Council members does not result in a prohibited seriatim meeting of either the Council or the Commission under the Brown Act.

i. Commissions may not interview candidates for political office or make endorsements of such candidates. Individual Commissioners must not use their Commission title in making personal political endorsements, including using the title for identification purposes only.

j. Commissioners individually or Commissions as a whole are free to recommend candidates for appointment to any City Board or Commission, including their own, to the City Council, Council Appointment Advisory Commission, Council Liaison or individual Council members.

k. Commissions may not independently support or oppose state or federal legislation, but instead shall be free to make recommendations on legislation to the City Council through the Rules and Open Government Committee.

l. Commissioners are prohibited from using their position as a commissioner to promote themselves for personal gain.

m. Only the City Council has the authority to designate the City's representatives with non-City entities. Commissions may not appoint or invite anyone to act as the City's representative or to advocate a particular cause or viewpoint on behalf of the Commission with any non-City entity. Commissions, however, are free to seek the advice or input of others in the course of making their recommendations to the Council.

n. Commissioners who are members of an organization which is in litigation against the City on issues related to the work of the Commission should not participate in any Commission discussion or review of matters affecting the organization if they are an officer of the organization, a named litigant in the lawsuit or disqualified because of a conflict of interest. Litigation includes an administrative enforcement action, lawsuit in a court of law or a claim filed with the City or Successor to the Redevelopment Agency.

o. All conflicts of interest and circumstances giving rise to a perceived conflict of interest should be avoided. Commissioners must avoid the appearance of favoritism towards people and organizations with whom a Commissioner is affiliated. For example, if a Commissioner serves as a volunteer board member for a service organization, the Commissioner must not vote on any matter which will directly affect that organization. The exception to abstention based on organizational affiliation applies where the Commissioner was appointed as a representative of the organization such as the Housing and Community Development Commission.

p. Commissioners may not contact consultants or others under contract with the City directly, outside of a Commission meeting, unless so authorized by City Administration.

q. Commissions should only take actions within their authority, duties and responsibilities as specifically set forth in the City's Municipal Code. Assigned legal staff will advise on legal issues related to jurisdiction and authority as required.

r. Commissioners shall not act as mediators or facilitators between the parties on matters that come before them. Any facilitation must be part of the public process and as requested or required by the City Council.

s. Commissions shall place items on the Council agenda in accordance with the Council Rules for the Conduct of its Meetings Resolution. Commissions should not request of Council Members to place items on a Rules and Open Government Committee or City Council Agenda.
t. The Chair, as defined by San José Municipal Code Section 2.08.070(B), shall preside at the meetings. The responsibility of the Chair is to make sure that each meeting is conducted in accordance with the San José Municipal Code, the approved Bylaws, this Code of Conduct, and Robert Rules of Order, and that matters before the Commission are dealt with in an orderly, efficient manner.

2. Quasi-Judicial Commissions

Commissions which sit as hearing bodies and take administrative actions, including the Planning Commission, Civil Service Commission, Board of Fair Campaign and Political Practices and Appeals Hearing Board must be diligent to ensure that a hearing is fair and impartial.

a. Commissioners should not have ex parte conversations with anyone on the subject, outside of the hearing. If a Commissioner has a communication with a party or a party's representative regarding the subject matter, facts or the issues of an administrative action pending before the Commission, the communication shall be disclosed on the record of the administrative action or proceeding before the action is heard.
b. Any visit to the site or other information gained outside of the hearing must be stated on the record. Commissioners should disqualify themselves if there is any appearance of bias.
c. Commissioners should not make any public comment on a matter pending before them until after the Commission has rendered a decision.

B. COUNCIL MEMBERS

1. Council Liaisons

The Council Liaison is the Council Member who is specifically assigned to be the liaison between the City Council and the Commission. The primary role of the Liaison is that of facilitator of communications between the Commission and the Council. A Council Member who is appointed to sit as a member of a Board or Commission is not a liaison for purposes of this Policy.

a. Definition of the Role

The Council Liaison shall facilitate communications between the Commission and the Council. The Liaison should not be an advocate for the Commission, give direction or influence a decision of the Commission. The Liaison may, however, assist and provide guidance to Commissions with their workplans or agendas.

b. Purpose

The Council Liaison acts as:

1) Spokesperson on behalf of the Council when so directed by the Council.
2) Contact person, if the Commission or an individual Commissioner wants such a channel of communication.
3) Monitor for the Commission to identify procedural and structural issues relating to the effective functioning of the Commission for Council.

c. Participation Expectation

1) Attendance is discretionary with the Council Member - attendance at Commission meetings is not required but is encouraged. The Council Member may send a member of his/her staff in his/her place.
2) The Council Liaison shall have no vote on the Commission and shall not act as an ex officio member of a Commission.
3) The Council Liaison's attendance at Commission retreats is discouraged unless attendance is requested by the Commission.

d. Role of Council Liaison Staff
1) Council Liaison staff do not serve as "alternates" to the Liaison but may attend to observe, provide information on behalf of the Liaison and answer questions in order to report back to their respective Council members.
2) Council Liaison staff members should not participate in the discussion by the Commission. However, staff can communicate messages on behalf of the Council Liaison and answer Commission questions.
3) Council Liaison staff members who attend meetings may sit at the table with the Commission at the discretion of the Commission or the chair.

2. Council Members
The following guidelines apply to all Council Members.
a. Council Members should not speak to any Commissioner on any matter that may come before the Council in a manner designed to influence the Commission. Nor should any Council Member privately lobby any Commissioner outside of the meetings in an attempt to influence his or her individual vote.
b. Any Council Member who has testified on his or her own behalf or as a witness before a Commission on any administrative action which then comes to Council is disqualified from participating as a Council Member on the matter only if there is a legal conflict of interest.
c. A Council Member must clearly state when he or she is speaking on behalf of the City Council.

SECTION V: AUTHORITY OF BOARDS AND COMMISSIONS

A. LEGISLATION
Boards and Commissions cannot independently take positions on legislation at the state and federal level. They can, however, recommend positions to the City Council on legislation in areas of their expertise. In addition, Boards and Commissions must act in a timely way to comply with the state and federal legislative schedule, using the following process:
1. Boards and Commissions will send a letter to the Mayor and City Council through the Commission Secretary requesting that they take a position on state or federal legislation.
2. The Mayor and City Council will refer the request to the City Clerk's Office in order to schedule the item on the next available Rules and Open Government Committee agenda.
3. If appropriate, the Rules and Open Government Committee will refer the legislation to the appropriate Council Committee for analysis and recommendation to the City Council. The Commission Secretary will be responsible for notifying the Chair of the Board or Commission when the legislation forwarded by the Board or Commission will be heard by the designated Council Committee.

B. POLITICAL INVOLVEMENT

1. City of San José Boards and Commissions are strictly prohibited from endorsing any candidate or from taking an independent position on any legislation or ballot measure. Further, Boards and Commissions may not be involved in gathering or disseminating information on any candidates or ballot measures (e.g., surveys, public debates, mailings, etc.)
2. Individual members of Boards and Commissions are free to exercise their individual right of political participation such as endorsing or contributing to a particular campaign. Members of certain Commissions (e.g., Planning Commission) must also be aware that State law imposes certain legal restrictions on soliciting or accepting political contributions and participating in quasi-judicial or entitlement actions.
3. No Board or Commission or individual member of a Board or Commission may take or allow any action which gives the appearance of official City involvement in any political campaign. For example, individual members may not use the titles of "Chair," "Vice-Chair," "Commissioner," "Board member," the title of their Board or Commission, or their commissioner title for identification purposes on any endorsement listing. Actual or facsimiles of City stationery or City business cards may not be used for any political mailing or distribution.

C. BOARD AND COMMISSION REFERRAL SYSTEM

From time to time, a Board or Commission may have a request for information that is outside the Board or Commission's Work Plan.

1. A "Major Study" means a request for information and/or research which meets one or more of the following criteria:
   a. It requires 20 staff-hours or more to complete. Exception: In the event of a hiring freeze, department-by-department basis dependent upon the impact of the freeze on a particular department.
   b. It is not a planned budgeted activity.
   c. Response action will seriously affect the respondent's annual planned performance or output.
   d. It will require a formal report.
   e. Possible change in current policy which was the culmination of extensive public input and/or as a result of committee/task force deliberations (i.e., C & C Tax Task Force or any policy task force, etc.).
   f. New policy research on which there has been no Council discussion or direction or because of its sensitivity and would involve more than 5 hours of Staff time.
2. All requests for information and/or research outside the Work Plan requested by a Board or Commission must adhere to the following provisions:
   a. A request for a Major Study requires approval of the Rules and Open Government Committee, and amendment to the Board or Commission's Work Plan.
   b. A request for a Major Study by a Board or Commission must be submitted in writing from the Board or Commission Chair to the City Clerk to be placed on the next available Rules and Open Government Committee Agenda.
   c. When a request for information and/or research is made to the Rules and Open Government Committee, it is the responsibility of the appropriate Council Appointee

and his or her respective staff to determine the scope of the request and to advise the Council through the Rules and Open Government Committee if a Major Study will be required, if the request can be met by reports or material already on file, or a brief research effort will be required.

d. If approved by a majority of the Rules and Open Government Committee, the guidelines for the Major Study must be stated. Evaluation of the request will take place at the Rules and Open Government Committee meeting using the following criteria:
   i. If the Major Study is within the parameters of the Board or Commission making the request.
   ii. The informational value of the study.
   iii. The parameters of the study.
   iv. The Staff time to be involved in completing the study.
   v. The estimated cost of the study.
   vi. The general feasibility of the study.

3. Boards and Commissions may receive written information that may require minor staff time or is already consistent with the Board or Commission's Work Plan, i.e., requests for information which is part of the Board or Commission's Work Plan should be accommodated.
4. A request for brief verbal information or for copies of reports already prepared and ready for distribution may be made directly to the Board or Commission Secretary.

D. LETTERS REGARDING COUNCIL OR COUNCIL COMMITTEE ITEMS

From time to time, a Board or Commission may submit letters or communications to the City Council or Council Committee regarding items within their subject matter jurisdiction. The City Clerk will provide guidelines for such letters and communications. Such letters or communications shall be submitted through the Commission Secretary. Direct email to the entire Council Committee or City Council from the Commission Chair shall not be allowed.

E. LETTERS REGARDING BOARD OR COMMISSION ITEMS TO NON-CITY ENTITIES

From time to time, a Board or Commission may desire to submit letters or communications to non-City entities regarding items within their subject matter jurisdiction. The City Clerk will provide guidelines for such letters and communications. Such letters or communications shall be submitted through the Commission Secretary, and be authorized by the Rules and Open Government Committee, or other designated Council Committee, of the City Council. Upon approval by the Committee, the Commission Secretary shall send the letter or communication to the non-City entities on the City's behalf.

SECTION VI. BOARD AND COMMISSION RECOGNITION

A member of a Board or commission may be recognized for his or her service as follows:

1. The City Clerk will prepare and present a commendation for each outgoing member of a Board or Commission who have served for at least one year and who have not been reappointed to that Board or Commission. Commendations shall be prepared and presented to all Board and Commission Members that the City Council appoints.
2. No commendation shall be prepared if a person ceases to be a member of a Board or Commission for any reason set forth in San José Municipal Code Section 2.08.050 or

2.08.130, except resignation or ineligibility, nor shall a commendation be prepared if the vacancy occurs because of insufficient attendance.

SECTION VI. IMPLEMENTATION

The City Clerk will provide this Policy to all current Board and Commission members, all Commission Secretaries, all City Council Members and appropriate City employees and will post this Policy on the City Clerk's Boards and Commissions page on the City's website.

APPENDIX A

LIST OF COUNCIL NOMINATED COMMISSIONS

Each Council Member and the Mayor nominates one commissioner to the following commissions. Council Members are not required to nominate commissioners from the district they represent.

- Airport Commission, 11 members
- Arts Commission, 11 members
- Council Appointment Advisory Commission, 11 members
- Housing and Community Development Commission, 15 members:
  - 11 members nominated by Mayor and City Council
  - 1 member recommended by an organization of owners of San Jose mobilehome parks (nominated by the Council Appointment Advisory Commission if more than one)
  - 1 member recommended by an organization of residents of San Jose mobilehome parks (nominated by the Council Appointment Advisory Commission if more than one)
  - 1 member who is an owner/manager of a residential rent stabilized rental property nominated by the Council Appointment Advisory Commission
  - 1 member who is a tenant of a residential rent stabilized rental unit nominated by the Council Appointment Advisory Commission
- Human Services Commission, 13 members:
  - 11 nominated by Mayor and City Council
  - 1 disability service provider or disabled community representative nominated by the Council Appointment Advisory Commission
  - 1 domestic violence service provider or domestic violence survivor nominated by the Council Appointment Advisory Commission
- Library and Early Education Commission, 15 members
  - 11 nominated by Mayor and City Council
  - 4 representatives with an early childcare background nominated by the Council Appointment Advisory Commission
- Parks and Recreations Commission, 11 members
- Senior Citizens Commission, 11 members
- Youth Commission, 11 members

APPENDIX B
Commission Bylaws Template

A RESOLUTION OF THE _____ COMMISSION ADOPTING AND ESTABLISHING RULES FOR THE CONDUCT OF ITS MEETINGS PROCEEDINGS AND BUSINESS, AND REPEALING THE PREVIOUS RESOLUTION

WHEREAS, the _____ Commission has found it necessary and desirable to adopt Rules of Order for the conduct of its business, now therefore,

BE IT RESOLVED BY THE _____ Commission of the City of San Jose that the Commission does hereby adopt Rules of Order for the conduct of its business, as follows:

RULES OF ORDER

ARTICLE I
GENERAL PROVISIONS

Section 100. DEFINITIONS. As used in these rules, unless the context clearly indicates otherwise:

(a) "Commission" means the _____ Commission;

(b) "Brown Act" means the Ralph M. Brown Act, California Government Code Sections 54950 et seq., as amended.

Section 101. GENERAL. The name of the Commission, the number of its members, the members' qualifications, and their appointment, removal and terms of office shall be prescribed by San José Municipal Code Chapter 2.08.

Section 102. OFFICE. San Jose City Hall, 200 E. Santa Clara Street, San Jose, California, is designated as the office of the Commission.

Section 103. REGULAR MEETING PLACE. Except as the Commission may from time to time provide an alternate location, the regular meeting place of the Commission shall be in San Jose City Hall, 200 E. Santa Clara Street, San Jose, California in a room to be designated on the meeting agenda. If a meeting cannot be held at the regular meeting place of the Commission or other City property, meetings may be held at any place designated by the Chairperson.

Section 104. RECORDS. All books, records, papers, tapes and minutes of the Commission meetings shall be maintained in _____, San Jose City Hall, 200 E. Santa Clara Street.

Section 105. FORMER COMMISSION MEMBERS. Former Commission members shall be treated as members of the public. Emeritus members shall not be allowed.

ARTICLE II
OFFICERS
CHAIR AND VICE CHAIR

Section 200. ELECTION. The Chair and Vice-Chair of the Commission shall be elected by the Commission from its membership by signed ballot vote or by oral vote at a Commission meeting.

Section 201. TERMS OF OFFICE. The Chair and Vice-Chair shall be elected for terms of one (1) year commencing at noon on the first meeting day of [Month], and continuing to the first meeting day of [Month] of the succeeding year. Elections of the Chair and Vice-Chair shall be conducted at [the Commission's annual retreat OR the first meeting of the Commission immediately following the expiration of the terms of office]. The Chair and Vice-Chair shall serve at the pleasure of the Commission during the term of office and may be removed from office by the Commission at any time for any reason. [select appropriate month and language based on the Commissions terms].

Section 202. VACANCIES IN OFFICE. The office of the Chair or Vice-Chair shall become vacant before the expiration of his or her term of office upon the happening of any of the events set forth in sub-sections (A) and (B) of Section 2.08.050 of the City of San José Municipal Code, or upon such officer's absence pursuant to Section 2.08.060, unless excused by the Rules and Open Government Committee. If the Chair or Vice-Chair should cease to be a member of the Commission, or if for any other reason the office of the Chair or Vice-Chair should become vacant prior to the expiration of the term of office, the Commission shall elect a successor to the office of Chair or Vice-Chair for the unexpired portion of the term.

Section 203. CHAIR, POWERS AND DUTIES. The Chair shall have the following powers and duties:

(a) The Chair shall preside at all meetings of the Commission.

(b) The Chair shall conduct meetings in accordance with the San José Municipal Code, the approved Bylaws, Council Policy 0-4 (Consolidated Policy Governing Boards and Commissions), Council Policy 0-37 (Code of Conduct for Public Meetings in the Council Chambers and Committee Rooms), and Robert Rules of Order. It is the

responsibility of the Chair to make sure that matters before the Commission are dealt with in an orderly, efficient manner.

(c) The Chair shall sign all written resolutions of the Commission and all minutes of all meetings of the Commission which are approved by the Commission.

(d) The Chair shall perform all other duties which may be required by the City of San José Municipal Code, by ordinance of the City of San Jose, or by resolution or order of the Commission consistent with the Municipal Code and the ordinances of the City of San Jose.

Section 204. VICE CHAIR, POWERS AND DUTIES. The Vice-Chair shall have the following powers and duties:

(a) In the event of and during the absence of the Chair, he or she shall preside as Chair at all meetings of the Commission and shall have and perform all other powers and duties of the Chair; and

(b) He or she shall perform all duties which may be required of the Vice-Chair by the City Charter, by ordinance or Council Policy of the City of San Jose, or by resolution or order of the Commission consistent with the Charter, ordinances and policies of the City of San Jose.

ARTICLE III
OFFICERS
CHAIR PRO TEMPORE

Section 300. In the event of vacancies in offices of the Chair and Vice-Chair, or in the event of the absence of the Chair and Vice-Chair, at the time of any meeting, the Commission may elect one of its members Chair Pro Tempore to preside over such meeting during such vacancies or absences. The Chair Pro Tempore shall have all the powers and duties of the Chair during such meeting.

ARTICLE IV
SECRETARY

Section 400. **APPOINTMENT**. The Secretary shall be the City staff person designated to serve as such by the City Administration.

Section 401. POWERS AND DUTIES. The Secretary shall have the following powers and duties:

(a) The Secretary shall attend all meetings of the Commission and shall record or keep minutes of all that transpires;

(b) The Secretary shall attest all minutes of the meetings of the Commission;

(c) The Secretary shall preserve, and be custodian of, all books, records, papers and tapes of the Commission. Whenever necessary he or she shall certify true copies of Commission documents; and

(d) The Secretary shall provide to the Commission agendas and agenda packets, and submit Commission letters, communications and recommendations to the Council.

(e) The Secretary shall perform all duties required of him or her by these rules and regulations, Council Policy 0-4 (Consolidated Policy Governing Boards and Commissions), and/or required of him or her by resolution or order of the Commission consistent with the City of San José Municipal Code and ordinances of the City of San Jose.

ARTICLE V
MEETINGS

Section 500. GENERAL. Except as otherwise provided by this article, meetings of the Commission shall be open and public and shall comply with the requirements of the Brown Act and the City Council's Consolidated Open Government and Ethics Resolution.

Section 501. **REGULAR MEETINGS**. Regular meetings of the Commission shall be at the time and place designated by the Commission in coordination with the City Administration. If the time scheduled for a regular meeting falls on a City Holiday, the regular meeting shall be held on the next succeeding business day.

Section 502. SPECIAL MEETINGS. A special meeting may be called at any time by the Chair of the Commission, or by a majority of its membership, in accordance with the Brown Act and the additional rules of procedure as described in the City Council's Consolidated Open Government and Ethics Resolution. The agenda shall specify the time and place of the special meeting and the business to be transacted; no other business shall be considered by the Commission at the special meeting.

Section 503. ADJOURNMENT – ADJOURNED MEETINGS. The Commission may adjourn any regular, adjourned regular, special or adjourned meeting to a time and place specified in the order of adjournment; a majority of members present, even though less than a quorum

may so adjourn. If all members are absent from a regular or adjourned regular meeting, the Secretary of the Commission may declare the meeting adjourned to a stated time and place; and he shall cause a written notice of the adjournment to be given in the manner provided in Section 502 for special meetings. A copy of the order or notice of adjournment shall be posted conspicuously on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within twenty-four (24) hours after the time of adjournment.

When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

Section 504. CONTINUANCE. A convened meeting, or any meeting ordered or noticed to be held, may by order or notice of continuance, be continued or recontinued to any subsequent meeting of the Commission in the same manner and to the same extent set forth in Section 503 for the adjournment of meetings; provided, if a hearing is continued to a time less than twenty-four (24) hours after the time specified in the notice or order of hearing, a copy of the order or notice of continuance shall be posted immediately following the meeting which orders or declares the continuance.

ARTICLE VI
MEETING AGENDA AND PROCEDURE

Section 600. AGENDA. The Commission shall provide for an agenda. No discussion may be held of any item that is not on the agenda. The Secretary shall prepare and distribute the agenda for the Commission.

Section 601. QUORUM. Six (6) members, being a majority of the total number of seats of the Commission, whether filled or vacant, shall constitute a quorum to transact business. Less than a quorum may adjourn the meeting or adjourn the meeting to a stated time. [quorum is 50% of seats, plus 1. Change the quorum as appropriate for your commission]

Section 602. VOTING. No action shall be taken by the Commission except by affirmative vote of a simple majority of those voting, as long as there is a quorum present.

Section 603. MANNER AND RECORDATION OF VOTES. Voting by members of the Commission shall be by "ayes" and "noes," and the result of each vote shall be entered by the Secretary in the record of the Commission proceedings. Upon the request of any Commission member, a roll call vote shall be taken on any matter upon which a vote is called, and each vote shall be recorded by the Secretary to the record of the Commission proceedings.

Section 604. ORDER OF BUSINESS. At regular meetings of the Commission the order of business shall be conducted in accordance with the requirements of the Brown Act and the

City Council's Consolidated Open Government and Ethics Resolution. The order of business may be changed at any meeting by the Commission.

ADOPTED this _____ day of _____, _____**,** by the following vote:

AYES: Commissioners –
NOES: Commissioners –
ABSENT: Commissioners –

_____
Chair

_____ Commission

Attest:

_____ Commission

_____

_____- Secretary

Parliamentary Procedure for Meetings

Robert's Rules of Order is the standard for facilitating discussions and group decision-making. Copies of the rules are available at most bookstores. Although they may seem long and involved, having an agreed-upon set of rules makes meetings run easier. ***Robert's Rules*** will help your group have better meetings, not make them more difficult. Your group is free to modify them or find another suitable process that encourages fairness and participation, unless your bylaws state otherwise.

Here are the basic elements of ***Robert's Rules***, used by most organizations:

1. ***Motion:*** To introduce a new piece of business or propose a decision or action, a motion must be made by a group member ("I move that.....") A second motion must then also be made (raise your hand and say, "I second it.") After limited discussion the group then votes on the motion. A majority vote is required for the motion to pass (or quorum as specified in your bylaws.)
2. ***Postpone Indefinitely:*** This tactic is used to kill a motion. When passed, the motion cannot be reintroduced at that meeting. It may be brought up again at a later date. This is made as a motion ("I move to postpone indefinitely..."). A second is required. A majority vote is required to postpone the motion under consideration.
3. ***Amend:*** This is the process used to change a motion under consideration. Perhaps you like the idea proposed but not exactly as offered. Raise your hand and make the following motion: "I move to amend the motion on the floor." This also requires a second. After the motion to amend is seconded, a majority vote is needed to decide whether the amendment is accepted. Then a vote is taken on the amended motion. In some organizations, a "friendly amendment" is made. If the person who made the original motion agrees with the suggested changes, the amended motion may be voted on without a separate vote to approve the amendment.
4. ***Commit:*** This is used to place a motion in committee. It requires a second. A majority vote must rule to carry it. At the next meeting the committee is required to prepare a report on the motion committed. If an appropriate committee exists, the motion goes to that committee. If not, a new committee is established.
5. ***Question:*** To end a debate immediately, the question is called (say "I call the question") and needs a second. A vote is held immediately (no further discussion is allowed). A two-thirds vote is required for passage. If it is passed, the motion on the floor is voted on immediately.
6. ***Table:*** To table a discussion is to lay aside the business at hand in such a manner that it will be considered later in the meeting or at another time ("I make a motion to table this discussion until the next meeting. In the meantime, we will get more information so we can better discuss the issue.") A second is needed and a majority vote required to table the item being discussed.
7. ***Adjourn:*** A motion is made to end the meeting. A second motion is required. A majority vote is then required for the meeting to be adjourned (ended).

Note: If more than one motion is proposed, the most recent takes precedence over the ones preceding it. For example if #6, a motion to table the discussion, is proposed, it must be voted on before #3, a motion to amend, can be decided.

In a smaller meeting, like a committee or board meeting, often only four motions are used:

- To introduce (motion.)
- To change a motion (amend.)
- To adopt (accept a report without discussion.)
- To adjourn (end the meeting.)

Remember, these processes are designed to ensure that everyone has a chance to participate and to share ideas in an orderly manner. Parliamentary procedure should not be used to prevent discussion of important issues.

Board and committee chairpersons and other leaders may want to get some training in meeting facilitation and in using parliamentary procedure. Additional information on meeting processes, dealing with difficult people, and using ***Robert's Rules*** is available from district office staff and community resources such as the League of Women Voters, United Way and other technical assistance providers. Parliamentary Procedure at a Glance, by O. Garfield Jones, is an excellent and useful guide for neighborhood association chairs.

Tips in Parliamentary Procedure

The following summary will help you determine when to use the actions described in ***Robert's Rules***.

- **A main motion must be moved, seconded, and stated by the chair before it can be discussed.**
- **If you want to move, second, or speak to a motion,** *stand and address the chair.*
- **If you approve the motion as is**, *vote for it.*
- **If you disapprove the motion**, *vote against it*.
- **If you approve the idea of the motion but want to change it**, *amend it or submit a substitute for it*.
- **If you want advice or information to help you make your decision**, *move to refer the motion to an appropriate quorum or committee with instructions to report back.*
- **If you feel they can handle it better than the assembly**, *move to refer the motion to a quorum or committee with power to act.*
- **If you feel that there the pending question(s) should be delayed so more urgent business can be considered**, *move to lay the motion on the table*.
- **If you want time to think the motion over**, *move that consideration be deferred to a certain time*.
- **If you think that further discussion is unnecessary**, *move the previous question.*
- **If you think that the assembly should give further consideration to a motion referred to a quorum or committee**, *move the motion be recalled*.
- **If you think that the assembly should give further consideration to a matter already voted upon**, *move that it be reconsidered.*
- **If you do not agree with a decision rendered by the chair**, *appeal the decision to the assembly*.
- **If you think that a matter introduced is not germane to the matter at hand**, *a point of order may be raised*.
- **If you think that too much time is being consumed by speakers**, *you can move a time limit on such speeches.*
- **If a motion has several parts, and you wish to vote differently on these parts**, *move to divide the motion*.

PARLIAMENTARY PROCEDURE AT A GLANCE

TO DO THIS	YOU SAY THIS	MAY YOU INTERRUPT SPEAKER	MUST YOU BE SECONDED	IS MOTION DEBATABLE	WHAT VOTE REQUIRED
Adjourn meeting*	I move that we adjourn	No	Yes	No	Majority
Recess meeting	I move that we recess until...	No	Yes	No	Majority
Complain about noise, room temperature, etc.*	Point of privilege	Yes	No	No	No vote
Suspend further consideration of something*	I move we table it	No	Yes	No	Majority
End debate	I move the previous question	No	Yes	No	2/3 vote
Postpone consideration of something	I move we postpone this matter until...	No	Yes	Yes	Majority
Have something studied further	I move we refer this matter to committee	No	Yes	Yes	Majority
Amend a motion	I move this motion be amended by...	No	Yes	Yes	Majority
Introduce business (a primary motion)	I move that...	No	Yes	Yes	Majority
Object to procedure or personal affront*	Point of order	Yes	No	No	No vote, Chair decides
Request information	Point of information	Yes	No	No	No vote
Ask for actual count to verify voice vote	I call for a division of the house	No	No	No	No vote
Object consideration of undiplomatic vote*	I object to consideration of this question	Yes	No	No	2/3 vote
Take up a matter previously tabled*	I move to take from the table...	No	Yes	No	Majority
Reconsider something already disposed of*	I move we reconsider our action relative to...	Yes	Yes	Yes	Majority
Consider something already out of its schedule*	I move we suspend the rules and consider	No	Yes	No	2/3 vote
Vote on a ruling by the Chair	I appeal the Chair's decision	Yes	Yes	Yes	Majority

*Not amendable

PARLIAMENTARY PROCEDURE AT A GLANCE

		Debatable	Amendable	Can Be Reconsidered	Requires 2/3 Vote
Privileged Motions	Fix Time at Which to Adjourn	No	Yes	No	No
	Adjourn	No	No	Yes	No
	Question of Privilege	No	Yes	Yes	No
	Call for Order of Day	No	No	Yes	No
Incidental Motions	Appeal	Yes	No	Yes	No
	Objection to Consideration of a Question	No	No	Yes	Yes
	Point of Information	No	No	No	No
	Point of Order	No	No	No	No
	Read Papers	No	No	Yes	No
	Suspend the Rules	No	No	No	Yes
	Withdraw a Motion	No	No	Yes	No
Subsidiary Motions	Lay on the Table	No	No	Yes	No
	The Previous Question (close debate)	No	No	Yes	Yes
	Limit or Extend Debate	No	Yes	Yes	Yes
	Postpone to a Definite Time	Yes	Yes	Yes	No
	Refer to Committee	Yes	Yes	Yes	No
	Amend the Amendment	Yes	No	No	No
	Amendment	Yes	Yes	Yes	No
	Postpone Indefinitely	Yes	No	Yes	No
Main Motion	Main or Procedural Motion	Yes	Yes	Yes	No

This table presents the motions in order of precedence. Each motion takes precedence over (i.e. can be considered ahead of) the motions listed below it. No motion can supersede (i.e. be considered before) any of the motions listed above it.

PLEASE NOTE: many organizations use only the Main Motion and Subsidiary Motions, handling other matters on an informal basis.

IN THE MEETING

TO INTRODUCE A MOTION:

Stand when no one else has the floor.
Address the Chair by the proper title.
Wait until the chair recognizes you.

- Now that you have the floor and can proceed with your motion say "I move that...," state your motion clearly and sit down.
- Another member may second your motion. A second merely implies that the seconder agrees that the motion should come before the assembly and not that he/she is in favor of the motion.
- If there is no second, the Chair says, "The motion is not before you at this time." The motion is not lost, as there has been no vote taken.
- If there is a second, the Chair states the question by saying "It has been moved and seconded that ... (state the motion). . ., is there any discussion?"

DEBATE OR DISCUSSING THE MOTION:

- The member who made the motion is entitled to speak first.
- Every member has the right to speak in debate.
- The Chair should alternate between those "for" the motion and those "against" the motion.
- The discussion should be related to the pending motion.
- Avoid using a person's name in debate.
- All questions should be directed to the Chair.
- Unless there is a special rule providing otherwise, a member is limited to speak once to a motion.
- Asking a question or a brief suggestion is not counted in debate.
- A person may speak a second time in debate with the assembly's permission.

VOTING ON A MOTION:

- Before a vote is taken, the Chair puts the question by saying "Those in favor of the motion that ... (repeat the motion)... say "Aye." Those opposed say "No." Wait, then say "The motion is carried," or "The motion is lost."
- Some motions require a 2/3 vote. A 2/3 vote is obtained by standing
- If a member is in doubt about the vote, he may call out "division." A division is a demand for a standing vote.
- A majority vote is more than half of the votes cast by persons legally entitled to vote.
- A 2/3 vote means at least 2/3 of the votes cast by persons legally entitled to vote.
- A tie vote is a lost vote, since it is not a majority.

AMENDMENTS ILLUSTRATED

Any main motion or resolution may be amended by:

1. Adding at the end
2. Striking out a word or words
3. Inserting a word or words
4. Striking out and inserting a word or words
5. Substitution

A member rises, addresses the chair, receives recognition, and states the motion:

"I move that. . . "

MAIN MOTION

Another member seconds the motion.

The Chair repeats the motion and says, "Is there any discussion?"

Must be germane to the main motion

To improve the motion, a member rises, receives recognition and says, "I move to amend the motion by . . . "

PRIMARY AMENDMENT

Another member seconds the amendment.

The Chair repeats the amendment and says, "Is there any discussion on the amendment?"

Must be germane to the primary amendment

To improve the amendment, a member rises, receives recognition, and says, "I move to amend the amendment by . . . "

SECONDARY AMENDMENT
(not amendable)

Another member seconds the amendment.

The Chair repeats the amendment to the amendment and says, "Is there any discussion on the amendment to the amendment?"

- When discussion ceases, the Chair says, "Those in favor of the amendment to the amendment say 'Aye.' Those opposed say 'No.'"
- If the vote was in the affirmative, the amendment is included in the primary amendment. The Chair then says, "Is there any discussion on the amended amendment?"
- If there is no discussion, a vote is taken on the amended amendment. If the vote in the affirmative, the amendment is included in the main motion. The chair then says, "Is there any discussion on the amended motion?"
- At this place, the motion can again be amended.
- If there is no further discussion, a vote is taken on the amended motion.
- Even though the amendments carried in the affirmative, the main motion as amended can be defeated.

Part 21 - CLEAN ENERGY COMMUNITY ADVISORY COMMISSION

2.08.2100 - Commission Established.

The Clean Energy Community Advisory Commission is hereby established.

(Ord. 30013.)

2.08.2110 - Number of Members.

The commission shall consist of nine (9) members.

(Ord. 30013.)

2.08.2120 - Special Eligibility Requirements.

A. Members shall be residents of the City, unless the City Council specifically authorizes a nonresident member.

B. Whenever possible, at least six (6) members shall have expertise in one (1) of the following categories: community outreach, policy advocacy, clean energy programs, industry, labor, education, not-for-profits, environmental associations, and advocacy organizations.

(Ord. 30013.)

2.08.2130 - Functions, Powers, and Duties.

The Commission shall have the following functions, powers, and duties:

A. Advise and make recommendations to the City Council and the City Manager, or designee, on all aspects of San José Clean Energy start-up and operations.

B. Provide feedback and input on the development of clean energy program strategy and operating principles or models.

C. Inform the prioritization and development of energy programs.

D. Identify areas of concerns and innovative opportunities for reducing carbon emissions.

E. Monitor best practices of other community choice energy programs, legislative and regulatory issues, and new energy developments.

F. Be liaisons to the community for purposes of advocacy and outreach.

(Ord. 30013.)

2.08.2140 - Appointment Process.

A. The Council Appointment Advisory Commission shall review all applicants and make a nomination to the City Council for the six (6) special eligibility seats noted in 2.08.2120.B above.

B. The remaining three (3) members shall be appointed to the Commission upon the Mayor's nomination to the City Council and the City Council's approval of such nomination.

(Ord. 30013.)