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ADVISORY BODIES HANDBOOK

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SECTION I

WELCOME!

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

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

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

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

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

SECTION II

YOUR GOVERNMENT

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

OPERATIONAL DEPARTMENTS

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

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

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

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

The **Personnel and Risk Manager**, under the direction of the Town Manager, supervises the recruitment, testing, classifying, evaluating, and training of employees and handles insurance and liability issues for the Town.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION III

ADVISORY BODY 101

TOWN COUNCIL PHILOSOPHY ON CITIZEN ADVISORY BODIES

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

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

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

OPPORTUNITIES FOR SERVICE

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

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

ELIGIBILITY REQUIREMENTS/QUALIFICATIONS

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

APPOINTMENT PROCESS

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

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

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

Applicants not appointed will be so advised.

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

ORIENTATION

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

OATH OF OFFICE

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

TERMS OF OFFICE

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

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

REMOVAL FROM OFFICE

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

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

VACANCIES

Seats become vacant in two ways:

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

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

SECTION IV

ADVISORY BODIES

PLANNING AND ECONOMIC DEVELOPMENT COMMISSION

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

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

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

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

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

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

RECREATION COMMISSION

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

Members - Terms. The Recreation Commission consists of five members, as determined by the Town Council. At least four members must be Town residents and registered voters. One member may reside outside of the Town but between June Lake and Tom's Place. In addition to the regular members of the Commission, the Town Manager and a member of the Town Council shall be ex officio members of the Commission. The Town Council may, in its discretion, appoint a representative of the United States Forest Service to serve as an ex officio member. Members serve a term of four years. Members are eligible for re-appointment. No term limits apply to the Recreation Commission.

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

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

6. Regularly review surveys provided by the Department Director (or designee) of the population of Mammoth Lakes, to ensure that parks, recreation, facilities, trails, and special event needs are being met.
7. Determine the recreational capital needs of the community, after review of recommendations by the Department Director (or designee), for consideration in the Town's Master Facility and Capital Improvement Program process.
8. Conduct public hearings related to land acquisition for recreation purposes, subject to Town Council approval.
9. Conduct public hearings and make decisions, subject to appeal to the Town Council, relating to park and facility design and development.
10. Provide input to contract professionals, in conjunction with the Department Director (or designee), to assist in the design of facilities approved for construction through the budget process, subject to appeal to the Town Council.
11. Review and provide recommendations to the Town Council regarding Measure R applications pursuant to the adopted regulations pertaining to the measure.
12. Receive donations, contributions, and other gifts to be used for parks and recreation purposes, but all money so received by it shall be deposited in a special parks and recreation account. Moneys in such an account shall be expended only for parks and recreation purposes, including capital expenditures as well as current operating expenses.

Meeting. Regular meetings are held on the first Tuesday after the first Monday of the month at 2:00 p.m. in the Council Chamber/Suite Z, 437 Old Mammoth Road.

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

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

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

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

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

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

SECTION V

GUIDELINES

RESPONSIBILITY OF BOARD, COMMISSION, AND COMMITTEE MEMBERS

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

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

CONFLICT OF INTEREST PROHIBITIONS

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

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

The Political Reform Act of 1974 includes requirements for filing of periodic statements of economic interests for members of the Planning Commission. Members of the Board of Appeals/Building Advisory Committee, Airport Commission, Mobility Commission, Public Arts Commission, and Recreation Commission are subject to Town filing requirements. The Town Clerk routinely advises the members of Boards and

Commissions of filing requirements and deadlines and will inform other advisory body members of any changes that would affect them.

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

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

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

ETHICS

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

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

4. **Try to Reach Decisions by Consensus.** Better decisions can be made by a level of consensus. Openly voice your individual goals and work to draft a solution to meet the largest number of goals.
5. **Value Your Vote.** You were appointed to express your opinions by voting on matters. Vote with the Mammoth Lakes community and your conscience in mind. If there are conflicting goals, vote for the higher purpose. If you have a conflict of interest, abstain from voting. Because of the value of your vote, abstentions in the absence of a conflict of interest are discouraged. Except where an abstention is due to a declared conflict of interest, failure of a board, commission, or committee member to vote shall be recorded with the prevailing vote on the matter.
6. **Give Political Assent: Do Not Misrepresent the Group.** Accept the results of a board, commission, or committee vote. Respect the decision of the group. Do not use your official capacity, unless specifically designated and authorized by your advisory board to represent yourself speaking or writing on behalf of the board, commission, or committee. Do not suggest you represent the group (for example, by using the name of the board, commission, or committee) or use your appointed status as a means of attempting to create an impression or influence others.
 - a. If you are a member of the Planning Commission, do not take an advocacy position before the Town Council or before any other public body on development projects that have or will come before the Commission. Planning Commission members must refrain from such action because 1) the matter may be referred by the Town Council back to the Commission for comment, recommendation, and/or action, and such advocacy creates a serious procedural due process conflict; and 2) it is not recommended that a Town Council appointee take a public advocacy position contrary to the decision of the Town Council.
7. **Respect Non-Partisanship.** The strength of local government in California is that it is non-partisan; be dedicated to the preservation of this system.
8. **Brown Act.** Be forthright in support and adherence to the Brown Act.
9. **Conflict of Interest.** If disqualified by reason of any conflict of interest in any matter, do not, in your official capacity, participate in any discussion in any way or comment on any matter in any way to any person, including any other commission member, councilmember or staff, and do not vote on such a matter.

REPRESENTING THE BOARD, COMMISSION, OR COMMITTEE

When commenting on matters relating to your official capacity as a board, commission, or committee member, you should make every effort to interpret and represent the view of the whole group. You should not represent your personal views or recommendations as those of the entire group unless a majority of the board, commission, or committee has voted to approve the recommendation. As noted above, if you express views that have not been approved by a majority of the group, you should make it clear that you are representing yourself as an individual and not the board, commission, or committee on which you serve.

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

RELATIONS WITH TOWN COUNCIL, STAFF, AND OTHERS

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

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

problems, as advisory bodies provide staff with excellent resources for obtaining community input and ideas. As an advisory board member, you should be aware of staff time involved in preparing reports and studies and should make sure that all requests made of staff are consistent with the charge of your particular board, commission, or committee. Advisory body members should not ask staff for individual reports, favors, or special consideration. It is also important to remember that while the staff is charged with assisting advisory bodies in accomplishing their functions, Town staff members are responsible to the Town Manager and the Town Council, and are tasked with carrying out the workplan established by the Town Council and staff as part of the annual budget process. They are not employees of the particular board, commission, or committee. There may be occasions when staff recommendations will vary from the recommendation of the board, commission, or committee.

3. **Relationships with Fellow Board, Commission, or Committee Members.**

Cooperation among members plays an important role in the success of Town boards, commissions, and committees. To build consensus around common goals and objectives, members should define the issues and work to reconcile differing viewpoints. When advisory body members interact positively, the group as a whole will be more effective. Important points to keep in mind when working with other group members are as follows:

- Always respect the other individual's viewpoint, even though it may be different from your own.
- Be courteous by allowing other members adequate time to present their views fully before making comments.
- Build integrity in all decisions by being open and honest at all times.
- Welcome new members and help them to become acquainted with the board, commission, or committee.
- Accept responsibility, voice opinions, and be fair and factual.
- Don't allow differences of opinion on prior decisions bias decisions on current issues.

4. **Relationships with the General Public.** The fundamental purpose of advisory body meetings are to provide a forum for open discussion on specific issues in a setting that is more informal than a Town Council meeting and to inform the public of what the group is doing. Good relations with the public are vital to accomplishing these goals. Boards, commissions, and committees should welcome citizen input as a valuable resource to the group, to understanding community concerns, and to gauge community reaction to

alternative courses of action under consideration. This builds public trust and credibility.

5. **Relationships with the Media.** In most situations, the board, commission, or committee chair is designated as the group's official spokesperson. However, reporters may seek out other advisory board members for comment. If you are contacted, please remember the important role the press plays in informing the public and remember that most reporters do want to write accurate, balanced stories and that they usually face rigid deadlines. When making statements to the press, you should remember the following:

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

ATTENDANCE

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

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

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

SECTION VI

MEETING PROTOCOL

AGENDA PREPARATION AND POSTING

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

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

PREPARATION FOR MEETINGS

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

Some questions to ask yourself may include:

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

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

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

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

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

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

RULES OF DEBATE

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

CHAIR

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

BOARD, COMMISSION, COMMITTEE MEMBERS

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

ADDRESSING THE BOARD, COMMISSION, OR COMMITTEE FROM THE FLOOR

Securing permission to speak.

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

Individuals

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

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

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

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

DECORUM IN MEETINGS

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

ROLE OF CHAIR

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

The Chair will:

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

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

PREPARING MOTIONS

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

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

Examples of Common Motions:

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

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

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

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

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

A motion goes through the following steps:

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

SECTION VII

LEGAL MATTERS

BROWN ACT

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

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

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

There are special requirements for advisory body agendas:

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

BROWN ACT PROVIDES FOR PUBLIC COMMENTS

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

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

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

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

COMMON QUESTIONS ABOUT THE BROWN ACT

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

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

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

5. **What are some exceptions to the Brown Act?** Advisory body members may attend and/or participate in the following as long as a majority of the members do not discuss amongst themselves matters that are within the subject matter jurisdiction of the advisory body:
 - Informational or educational workshops or conferences.
 - Community meetings, such as town hall meetings, workshops, forums, etc. not sponsored by the advisory body.
 - A meeting of another body of the local agency.
 - Social or ceremonial events.

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

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

CONFLICT OF INTEREST/STATEMENTS OF ECONOMIC INTERESTS FORM 700

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

What is a Conflict of Interest?

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

ETHICS TRAINING

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

SECTION VIII

POLICY FOR ADVISORY COMMITTEES AND COMMISSIONS

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

adequate information in order to make informed recommendations.

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

c. Staff Role:

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

APPENDICES

Rosenberg's Rules of Order



Rosenberg's Rules of Order

REVISED 2011

*Simple Rules of Parliamentary
Procedure for the 21st Century*

By Judge Dave Rosenberg



MISSION

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

VISION

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

About the League of California Cities

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

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About the Author

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

INTRODUCTION

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

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

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

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

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

Establishing a Quorum

The starting point for a meeting is the establishment of a quorum. A quorum is defined as the minimum number of members of the body who must be present at a meeting for business to be legally transacted. The default rule is that a quorum is one more than half the body. For example, in a five-member body a quorum

is three. When the body has three members present, it can legally transact business. If the body has less than a quorum of members present, it cannot legally transact business. And even if the body has a quorum to begin the meeting, the body can lose the quorum during the meeting when a member departs (or even when a member leaves the dais). When that occurs, the body loses its ability to transact business until and unless a quorum is reestablished.

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

The Role of the Chair

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

Since the chair runs the conduct of the meeting, it is usual courtesy for the chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the chair should not participate

in the debate or discussion. To the contrary, as a member of the body, the chair has the full right to participate in the debate, discussion and decision making of the body. What the chair should do, however, is strive to be the last to speak at the discussion and debate stage. The chair should not make or second a motion unless the chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

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

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

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

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

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

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

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

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

This is done in one of three ways:

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

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

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

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

motion requiring a 10-day notice for all future meetings of this body.”

Motions in General

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

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

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

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

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

The Three Substantive Motions

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

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

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

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

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

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

Multiple Motions Before the Body

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

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic “motion to have a five-member committee to plan and put on our annual fundraiser.” During the discussion of this motion, a member might make a second motion to “amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual

fundraiser.” And perhaps, during that discussion, a member makes yet a third motion as a “substitute motion that we not have an annual fundraiser this year.” The proper procedure would be as follows:

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

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

Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the

floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

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

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

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

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

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

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

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

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

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

Majority and Super Majority Votes

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

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

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

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

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

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

Counting Votes

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

Usually, it's pretty easy to determine whether a particular motion passed or whether it was defeated. If a simple majority vote is needed to pass a motion, then

one vote more than 50 percent of the body is required. For example, in a five-member body, if the vote is three in favor and two opposed, the motion passes. If it is two in favor and three opposed, the motion is defeated.

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

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

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

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

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

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

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

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

Assume that a five-member city council is voting on a motion that requires a simple majority vote to pass, and assume further that the body has no specific rule on counting votes. Accordingly, the default rule kicks in

and all votes of members that are “present and voting” are counted. If the vote on the motion is 3-2, the motion passes. If the motion is 2-2 with one abstention, the motion fails.

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

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

Now, exactly how does a member cast an “abstention” vote? Any time a member votes “abstain” or says, “I abstain,” that is an abstention. However, if a member

votes “present” that is also treated as an abstention (the member is essentially saying, “Count me for purposes of a quorum, but my vote on the issue is abstain.”). In fact, any manifestation of intention to vote either “yes” or “no” on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

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

The Motion to Reconsider

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

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

First, is the matter of timing. A motion to reconsider must be made at the meeting where the item was first voted upon. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to

suspend the rules and, by a two-thirds majority, allow a motion to reconsider to be made at another time.)

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

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

Courtesy and Decorum

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

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

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

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

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

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

Appeal. If the chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if

it passes by a simple majority vote, then the ruling of the chair is deemed reversed.

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

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

Special Notes About Public Input

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

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

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

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



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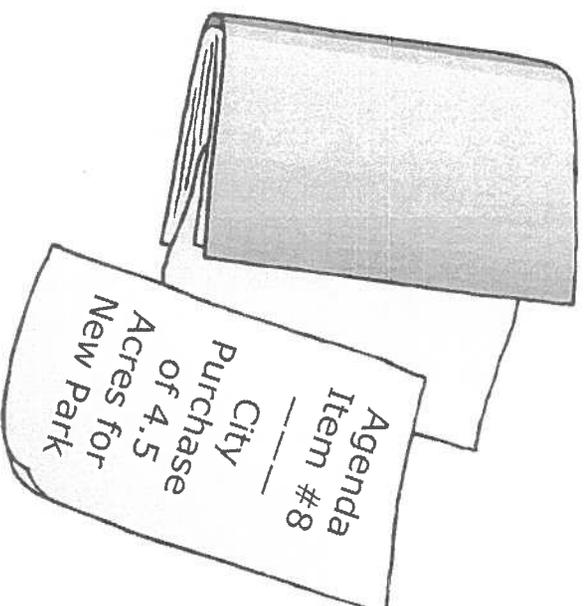
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Can I Vote?

Can I vote?

**A Basic Overview
Of Public Officials'
Obligations Under the
Political Reform Act's
Conflict-of-Interest Rules**



**California
Fair Political
Practices
Commission**

“My home is near the proposed new shopping mall. Can I vote on the issue at next month’s Planning Commission meeting?”

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act’s conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the “big picture” level and to help guide you to more detailed resources.

Stripped of legal jargon:

➤ You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that



**Fair
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Commission**

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the outcome of the decision will have an important impact on your economic interests, **and**

➤ a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act “on general principles” or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note...

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC’s web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — **1-866-ASK-FPPC** — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

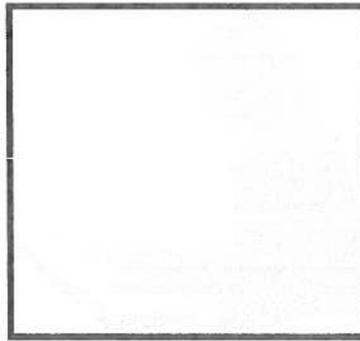
Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide



Step One: Are you a “public official” within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the “public generally” exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a “public official,” within the meaning of the rules?

The Act’s conflict-of-interest rules apply to “public officials” as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency’s conflict-of-interest code, you are a “public official.” If you file a Statement of Economic Interests (Form 700) each year, you are a “public official” under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency’s legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

**When you have a conflict —
Regulation 18702.5 (special rule for
section 87200 public officials)**

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

-
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— *The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.*

— *Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.*

— *Supervisor Robertson rents a home to a county employee. The county employee is the sub-*

*ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

-
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

“The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise.”

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse’s or registered domestic partner’s income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving “pass-through” income from the business’s clients. In other words, the business’s clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total \$390 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the “personal financial effects” rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a “personal financial effect” on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.



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Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC’s web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word “material” is akin to the term “important.” You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called “materiality standards,” that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

“Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”

-- California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a “big picture” level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment’s thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does “sufficiently likely” mean? Put another way, how “likely” is “likely enough?” The Political Reform Act uses the words “reasonably foreseeable.” The FPPC has interpreted these words to mean “substantially likely.” Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

“Public Generally” Exception

Step Seven — If you have a conflict of interest, does the “public generally” exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the “public generally” exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The “public generally” exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the “public generally” exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act’s conflict-of-interest laws:

-
- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
 - Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
 - Understand the “big picture” of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
 - Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.
 - Don’t try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the “big picture.” You’ll then be able to look up or ask about the particular rules you need to apply to any given case.
 - Don’t be afraid to ask for advice. It is available from your agency’s legal counsel and from the FPPC.



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**Fair Political
Practices Commission**

Appendix C

Guide to the Ralph M. Brown Act



OPEN & PUBLIC IV:

A Guide to the Ralph M. Brown Act

— 2ND EDITION, REVISED JULY 2010 —



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CHAPTER 1:

IT IS THE PEOPLE'S BUSINESS



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OPEN & PUBLIC IV

A GUIDE TO THE RALPH M. BROWN ACT



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PUBLIC PARTICIPATION

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OPEN & PUBLIC IV:
A GUIDE TO THE RALPH M. BROWN ACT, 2ND EDITION
Revised July 2010



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League of California Cities

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FOREWORD

The goal of this publication is to explain the requirements of the Ralph M. Brown Act, California's open meeting law, in lay language so that it can be readily understood by local government officials and employees, the public and the news media. We offer practical advice—especially in areas where the Brown Act is unclear or has been the subject of controversy—to assist local agencies in complying with the requirements of the law.

A number of organizations representing diverse views and constituencies have contributed to this publication in an effort to make it reflect as broad a consensus as possible among those who daily interpret and implement the Brown Act. The League thanks the following organizations for their contributions:

Association of California Healthcare Districts
Association of California Water Agencies
California Association of Sanitation Agencies (CASA)
California Attorney General—Department of Justice
City Clerks Association of California
California Municipal Utilities Association
California Redevelopment Association
California School Boards Association
California Special Districts Association
California State Association of Counties
Community College League of California
California First Amendment Project
California Newspaper Publishers Association
Common Cause
League of Women Voters of California

This publication is current as of June 2010. Updates to the publication responding to changes in the Brown Act or new court interpretations are available at www.cacities.org/opengovernment.

This publication is not intended to provide legal advice. A public agency's legal counsel is responsible for advising its governing body and staff and should always be consulted when legal issues arise.

To improve the readability of this publication:

- Most text will look like this;
- Practice tips are in the margins;
- **Hypothetical examples are printed in blue; and**
- Frequently asked questions, along with our answers, are in shaded text.

Additional copies of this publication may be purchased by visiting CityBooks online at www.cacities.org/store.

CHAPTER 1:

IT IS THE PEOPLE'S BUSINESS



■ THE RIGHT OF ACCESS

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

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

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

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

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

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

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

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

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.

■ 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 e-mail 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, personal digital assistants, or cellular telephones) 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 don't 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.

■ 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.

■ 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's 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 doesn't provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

Practice Tip:

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

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.

■ 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 Gov. 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.

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.



Assembly Member Brown is best known for the open meeting law that carries his name. He was elected to the Legislature 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 (c); *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



WHAT IS A "LEGISLATIVE BODY"
OF A LOCAL AGENCY?

WHAT IS NOT A "LEGISLATIVE BODY"
FOR PURPOSES OF THE BROWN ACT?

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 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, school district, municipal corporation, redevelopment agency, district, political subdivision, or other 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 local agencies within the meaning of the Brown Act.⁶
- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.⁷ Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

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

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

Practice Tip:

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

- **Appointed bodies**—whether permanent or temporary, decision-making or advisory—including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and “blue ribbon committees” created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information, 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 comprised of 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, function over form controls. For example, a statement by the legislative body that “the advisory committee shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.¹⁰ “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹¹
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.¹² These include some nonprofit corporations created by local agencies.¹³ If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.¹⁴ When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.¹⁵

Practice Tip:

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

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

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

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

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

- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.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
- County central committees of political parties are also not Brown Act bodies.²¹

Endnotes

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54952(a)
- 3 California Government Code section 54951. *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* (1979) 89 Cal.App.3d 545
- 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
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 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
- 12 California Government Code section 54952(c)(1)(B). 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* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also:* 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 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," California Attorney General (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
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

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CHAPTER 3:

MEETINGS



BROWN ACT MEETINGS

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CHAPTER 3:

MEETINGS



The Brown Act only applies to meetings of local legislative bodies. The Brown Act defines a meeting as: "... any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains."¹ Under the Brown Act, the term "meeting" is not limited to gatherings at which action is taken but includes deliberative gatherings as well.

■ BROWN ACT MEETINGS

Brown Act gatherings 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.²
- "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.³
- "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.⁴
- "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.⁵

■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition: ⁶

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. Again, a majority 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. 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.⁷ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's 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).⁸

- 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 sixth and 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 local agency.

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 local agency is discussed. So long as no local agency business is discussed, there is no violation of the Brown Act.

■ COLLECTIVE BRIEFINGS

None of these six 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

There is consensus among local agency attorneys that 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 on team building and group dynamics.⁹

- 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 problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. 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."¹⁰

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, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,¹¹ or a chief executive officer briefing a majority of redevelopment agency members 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 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."¹²

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 directed staff by letter on an eminent domain action.¹³



A unilateral written communication to the legislative body, such as an informational or advisory memorandum, does not violate the Brown Act.¹⁴ Such a memo, however, may be a public record.¹⁵

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."¹⁶ 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. "Any idea what the other council members think of the problem?"

The planning director should not ask, and the member should not answer. A one-on-one meeting that involves communicating the comments or position of other members violates 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 Web site 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 this kind of communication, 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.¹⁷ A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to 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. But it is the kind of situation that 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.

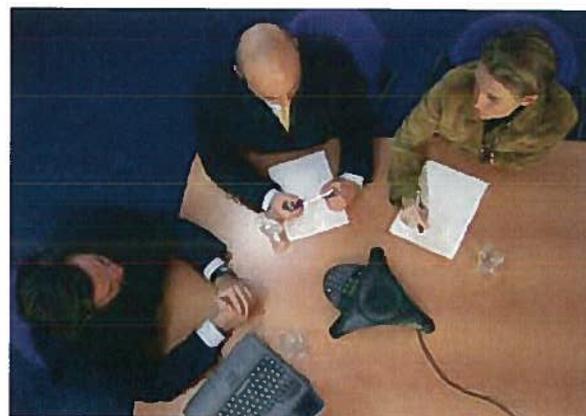
- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen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

In an effort to keep up with information age technologies, the Brown Act now specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.¹⁸ While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary within the body.

“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.”¹⁹ 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 specific requirements:²⁰

- 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;



Practice Tip:

Legal counsel for the local agency should be consulted before teleconferencing a meeting.

- 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 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 new 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.²¹

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:

- Comply with state or federal law or a court order, or for a judicial conference or administrative proceeding in which the local agency is a party;
- Inspect real or personal property, which 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 able 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 involved agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries or 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.²²

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.²³ 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.²⁴

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.²⁵

Endnotes:

- 1 California Government Code section 54952.2(a)
- 2 California Government Code section 54954(a)
- 3 California Government Code section 54956
- 4 California Government Code section 54956.5
- 5 California Government Code section 54955
- 6 California Government Code section 54952.2(c)
- 7 California Government Code section 54952.2(c)(4)
- 8 California Government Code section 54952.2(c)(6)
- 9 “The Brown Act,” California Attorney General (2003), p. 10
- 10 California Government Code section 54952.2(b)(1)
- 11 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
- 12 California Government Code section 54952.2(b)(2)
- 13 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
- 14 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 15 California Government Code section 54957.5(a)
- 16 California Government Code section 54952.2(b)(2)
- 17 California Government Code section 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964)
- 18 California Government Code section 54953(b)(1)
- 19 California Government Code section 54953(b)(4)
- 20 California Government Code section 54953
- 21 California Government Code section 54954(b)
- 22 California Government Code section 54954(b)(1)-(7)
- 23 California Government Code section 54954(c)
- 24 California Government Code section 54954(d)
- 25 California Government Code section 54954(e)

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CHAPTER 4:

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



AGENDAS FOR REGULAR MEETINGS

MAILED AGENDA UPON WRITTEN REQUEST

NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

NOTICES AND AGENDAS FOR ADJOURNED AND
CONTINUED MEETINGS AND HEARINGS

NOTICE REQUIREMENTS FOR EMERGENCY
MEETINGS

EDUCATIONAL AGENCY MEETINGS

NOTICE REQUIREMENTS FOR TAX OR
ASSESSMENT MEETINGS AND HEARINGS

NON-AGENDA ITEMS

RESPONDING TO THE PUBLIC

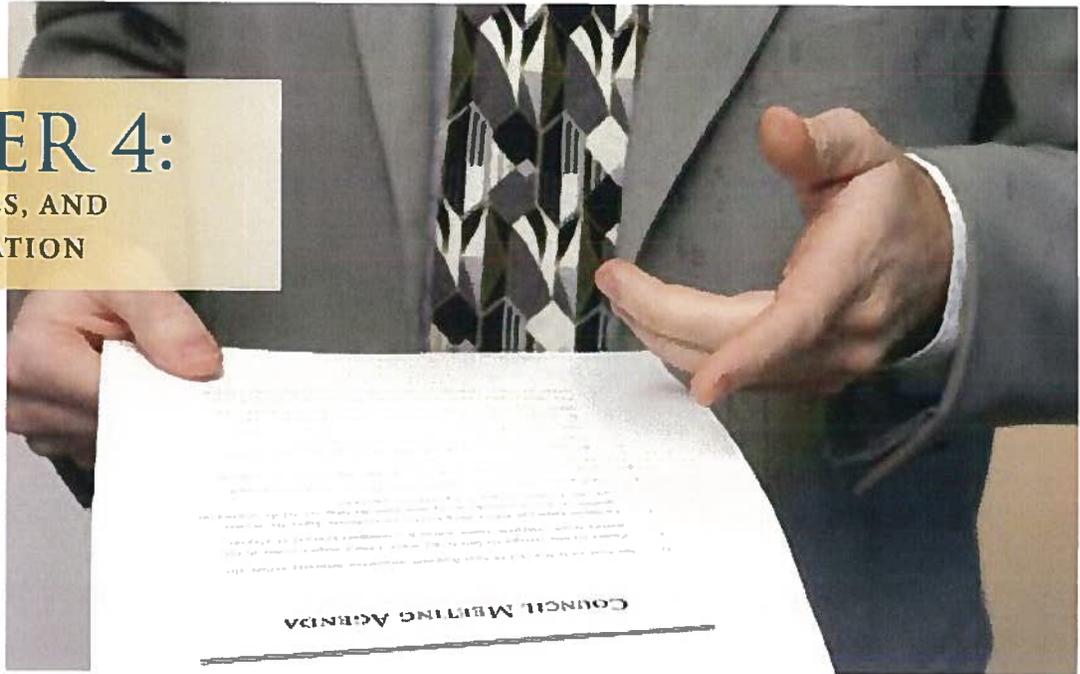
THE RIGHT TO ATTEND MEETINGS

RECORDS AND RECORDINGS

THE PUBLIC'S PLACE ON THE AGENDA

CHAPTER 4:

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

■ AGENDAS FOR REGULAR MEETINGS

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”¹ The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this provision to require posting in locations 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 Posting may also be made on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.³ However, only posting an agenda on an agency’s Web site is inadequate since there is no universal access to the internet. 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.”⁴

Practice Tip:

Putting together a meeting agenda requires careful thought.

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

- “Consideration of a report regarding traffic on Eighth Street”
- “Consideration of 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 Jan. 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.⁵



■ 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 in a site freely accessible to the public. The body cannot consider business not in the notice.⁶

■ 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.⁷ 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.⁸ 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.⁹

■ NOTICE REQUIREMENTS FOR EMERGENCY MEETINGS

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.¹⁰ 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.

■ EDUCATIONAL AGENCY MEETINGS

The Education Code contains some special agenda and special meeting provisions,¹¹ however, they are generally consistent with the Brown Act. An item is probably void if not posted.¹² A school district board must also adopt regulations to make sure the public can place matters affecting district's business on meeting agendas and to address the board on those items.¹³

■ 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 general tax or assessment.¹⁴ 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 public testimony may be given before the legislative body proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.¹⁵

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.¹⁶ As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

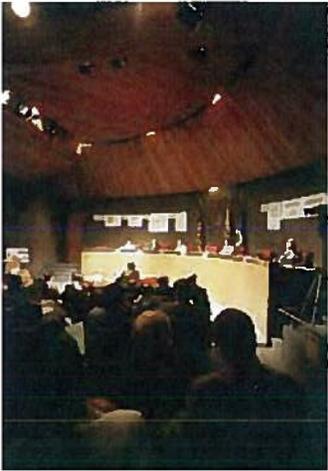
■ NON-AGENDA ITEMS

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:¹⁷

- 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: (a) that there is an immediate need to take action and (b) 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.¹⁸ However, caution should be used to avoid any discussion or action on such items.

Council Member A: 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: 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 B: 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 other 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.¹⁹

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.²⁰ This does not mean however that the public is entitled to free entry to a conference attended by a majority of the legislative body.²¹

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.²²

Action by secret ballot, whether preliminary or final, is flatly prohibited.²³

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.*

There can be no semi-closed meetings, in which some members of the public are permitted to attend as spectators while others are not; meetings are either open or closed.²⁴

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, 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.²⁵



■ 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.²⁶ A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.²⁷

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 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.²⁸ 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.²⁹

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 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.³⁰ The agency may impose its ordinary charge for copies.³¹

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.³²

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.³³

■ 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.³⁴

- 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.*

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.

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.³⁵

- 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.³⁶

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.³⁷

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.³⁸

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 section 54954.2(a)(1)
- 5 California Government Code section 54954.1
- 6 California Government Code section 54956
- 7 California Government Code section 54955
- 8 California Government Code section 54954.2(b)(3)
- 9 California Government Code section 54955.1
- 10 California Government Code section 54956.5
- 11 Education Code sections 35144, 35145 and 72129
- 12 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 13 California Education Code section 35145.5
- 14 California Government Code section 54954.6
- 15 California Government Code section 54954.6(g)
- 16 See: Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 17 California Government Code section 54954.2(b)
- 18 California Government Code section 54954.2(a)(2)
- 19 California Government Code section 54953.3
- 20 California Government Code section 54961(a); California Government Code section 11135(a)
- 21 California Government Code section 54952.2(c)(2)
- 22 California Government Code section 54953(b)
- 23 California Government Code section 54953(c)
- 24 46 Ops.Cal.Atty.Gen. 34 (1965)
- 25 California Government Code section 54957.9
- 26 California Government Code section 54957.5
- 27 California Government Code section 54957.5(d)
- 28 California Government Code section 54957.5(b)
- 29 California Government Code section 54957.5(c)
- 30 California Government Code section 54953.5(b)
- 31 California Government Code section 54957.5(d)
- 32 California Government Code section 54953.5(a)
- 33 California Government Code section 54953.6
- 34 California Government Code section 54954.3(a)
- 35 California Government Code section 54954.3(c)
- 36 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)
- 37 California Government Code section 54954.3(a)
- 38 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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CHAPTER 5:

CLOSED SESSIONS



The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. 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 must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.¹

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. 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. Individuals who do not have an official role in advising the legislative body on closed session subject matters must be excluded from closed session discussions.²

Practice Tip:

Meetings are either open or closed. There is no “in between.”

- 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.*

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.

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, the Brown Act does not authorize closed sessions for general contract negotiations.

■ AGENDAS AND REPORTS

Closed session items must be briefly described on the posted agenda and the description must state the specific statutory exemption. 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 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.

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 drug cases, hospital boards of directors, and medical quality assurance committees.³

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.⁴

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.⁵ 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.⁶

The Brown Act does not require minutes, including minutes of closed session. A confidential “minute book” may be kept to record actions taken at closed sessions.⁷ 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.⁸ 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:

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.

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.

■ LITIGATION

There is an attorney/client relationship, and legal counsel may use it for privileged written and verbal communications—outside of meetings—to members of the legislative body. But protection of the attorney/client privilege cannot by itself be the reason for a closed session.⁹

The Brown Act expressly authorizes closed sessions to discuss what is considered 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 a party.¹⁰ 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. For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body and an adverse party or to hold a closed session for the purpose of participation in a mediation.¹¹

The California Attorney General believes that if the agency's attorney is not a participant, a litigation closed session cannot be held.¹² 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.

Litigation that may be discussed in closed session includes the following three types of matters:

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.*

In general, the most common purpose of a closed session is to avoid revealing confidential information that may, in specified circumstances, prejudice the legal or negotiating position of the agency or compromise the privacy interests of employees. Closed sessions should be conducted keeping those narrow purposes in mind.

Grounds for convening a closed session in this chapter 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. It is improper in these cases, to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

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 to 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 that requires actions that are subject to public hearings cannot be approved in closed session.¹³

Threatened litigation against the local agency

Closed sessions are authorized for legal counsel to inform the legislative body of specific facts and circumstances that suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances.¹⁴ 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.

Initiation of litigation by the local agency

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

In certain cases, the circumstances and facts justifying the closed session must be publicly noticed on the agenda or announced at an open meeting. Before holding a closed session under the pending litigation exception, the legislative body must publicly state which of the three basic situations apply. It may do so simply by making a reference to the posted agenda.

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. Each agency attorney should be aware of and should make other disclosures that may be required in specific instances.



■ 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.¹⁵ 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.¹⁶

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 believe 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 negotiator, the real property that the negotiations may concern and the names of the persons with whom its negotiator may negotiate.¹⁷

After real estate negotiations are concluded, the approval and substance of the agreement must be 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 as soon as informed of it. Once final, the substance of the agreement must be disclosed to anyone who inquires.



“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.”¹⁸ 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.¹⁹ The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.²⁰ That authority may be delegated to a subsidiary appointed body.²¹

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. The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.²² If the employee is not given notice, any disciplinary action is null and void.²³

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.

- 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.*

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.²⁴

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.²⁵ 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. An example of the latter is 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.²⁶ 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.

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.²⁷ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.²⁸

“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.

- Q.** The school board is meeting in closed session to evaluate the superintendent and to consider giving her a pay raise. May the superintendent attend the closed session?
- A.** *The superintendent may attend the portion of the closed session devoted to her evaluation, but may not be present during discussion of her pay raise. Discussion of the superintendent’s compensation in closed session is limited to giving direction to the school board’s negotiator. Also, the clerk should be careful to notice the closed session on the agenda as both an evaluation and a labor negotiation.*

Practice Tip:

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

■ LABOR NEGOTIATIONS

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,²⁹ on employee salaries and fringe benefits for both union and non-union employees. For represented employees, it may also consider working conditions that by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may 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.³⁰

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.³¹ The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an “employee” includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

■ 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.³²

Public participation under the Rodda Act also takes another form.³³ 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.³⁴ The final vote must be in public.

Practice Tip:

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



■ 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.³⁵

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.³⁶ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.³⁷

■ GRAND JURY TESTIMONY

A legislative body, including its members as individuals, may testify in private before a grand jury, either individually or as a group.³⁸ Attendance by the entire legislative body before a grand jury would not constitute a closed session meeting under the Brown Act, since the body would not be meeting to make decisions or reach a consensus on issues within the body's subject matter jurisdiction.

■ 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. 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.³⁹

■ 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 Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.⁴⁰ Action taken in closed session with respect to such public security issues is not reportable action.

■ MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

A joint powers agency formed to provide drug law enforcement services 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.⁴¹

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.⁴²

Practice Tip:

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

■ 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.⁴³

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.⁴⁴

■ THE CONFIDENTIALITY OF CLOSED SESSION DISCUSSIONS

It is not uncommon for agency officials to complain that confidential information is being leaked from closed sessions. The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality.⁴⁵ 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.⁴⁶ 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.⁴⁷

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long believed 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,⁴⁸ though the Attorney General has also concluded that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.⁴⁹ In any event, the Brown Act now prescribes remedies for breaches of confidentiality. These include injunctive relief, disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.⁵⁰

The duty of maintaining confidentiality, of course, must give way to the obligation to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, the Brown Act exempts from its prohibition against disclosure of closed session communications disclosure of closed session information to the district attorney or the grand jury due to a perceived violation of law, expressions of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action, and disclosing information that is not confidential.⁵¹

Practice Tip:

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

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 is appropriate—the Brown Act requires that certain final votes taken in closed session be reported publicly.⁵² 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 61 Ops.Cal.Atty.Gen. 220 (1978)
- 2 82 Ops.Cal.Atty.Gen. 29 (1999)
- 3 California Government Code section 54954.5
- 4 California Government Code sections 54956.9 and 54957.7
- 5 California Government Code section 54957.1(a)
- 6 California Government Code section 54957.1(b)
- 7 California Government Code section 54957.2
- 8 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18702.1(c)
- 9 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 10 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).
- 11 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 12 "The Brown Act," California Attorney General (2003), p. 40
- 13 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 14 Government Code section 54956.9(b)
- 15 California Government Code section 54956.8
- 16 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 172; see also ___ Ops.Cal.Atty.Gen. ___ (May 21, 2010) (2010 WL 2150433) (concluding it is impermissible for a redevelopment agency to meet in closed session to discuss the terms of a rehabilitation loan to a business that was leasing property from the agency when the terms and conditions of the lease itself were not also a matter of discussion.)
- 17 California Government Code section 54956.8
- 18 California Government Code section 54957(b)
- 19 63 Ops.Cal.Atty.Gen. 215 (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).
- 20 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 21 *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.
- 22 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 23 California Government Code section 54957
- 24 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
- 25 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 26 California Government Code section 54957
- 27 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 28 California Government Code section 54957.1(a)(5)

- 29 California Government Code section 54957.6
- 30 57 Ops.Cal.Atty.Gen. 209 (1974)
- 31 California Government Code section 54957.1(a)(6)
- 32 California Government Code section 3549.1
- 33 California Government Code section 3540
- 34 California Government Code section 3547
- 35 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.)
- 36 California Education Code section 72122
- 37 California Education Code section 60617
- 38 California Government Code section 54953.1
- 39 California Government Code section 54956.7
- 40 California Government Code section 54957
- 41 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 42 California Government Code section 54957.8
- 43 California Government Code section 54962
- 44 California Health and Safety Code section 32106
- 45 Government Code section 54963
- 46 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also: California Government Code section 54963
- 47 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 48 80 Ops.Cal.Atty.Gen. 231 (1997)
- 49 76 Ops.Cal.Atty.Gen. 289 (1993)
- 50 California Government Code section 54963
- 51 California Government Code section 54963
- 52 California Government Code section 54957.1

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CHAPTER 6:

REMEDIES



INVALIDATION

CIVIL ACTION TO PREVENT
FUTURE VIOLATIONS

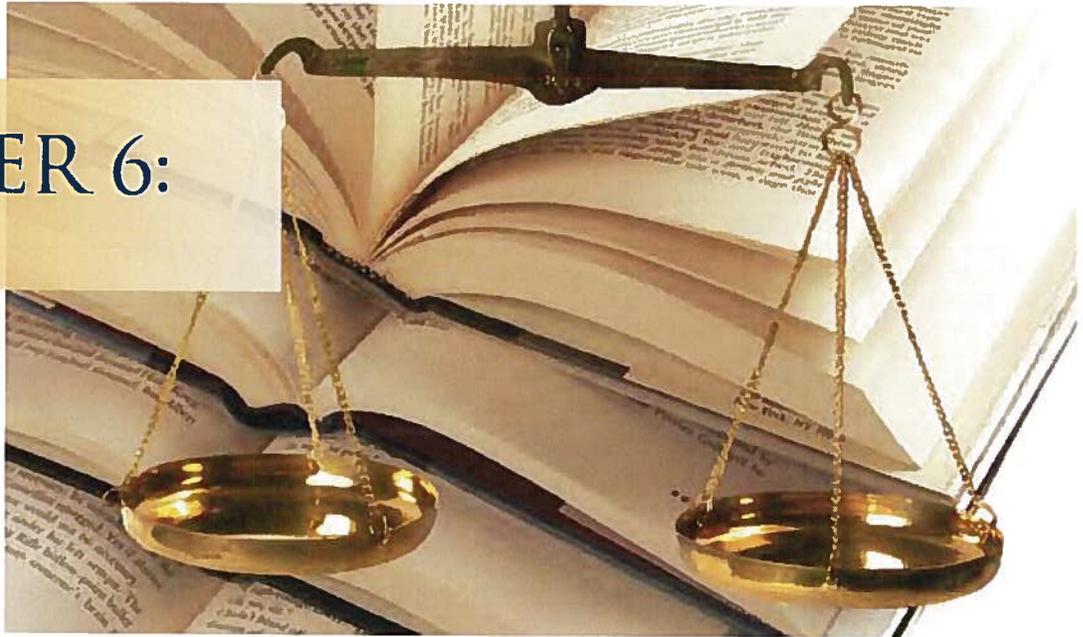
COSTS AND ATTORNEY'S FEES

CRIMINAL COMPLAINTS

VOLUNTARY RESOLUTION

CHAPTER 6:

REMEDIES



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

■ INVALIDATION

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

- Those taken in substantial compliance with the law;
- 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 meeting 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, the nature of the claimed violation, and the "cure" sought. 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 agendaized items are acted on by the governing body during a meeting.² 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. 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 to start over.

Although just about anyone has standing to bring an action for invalidation,³ the challenger must show prejudice as a result of the alleged violation.⁴ An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.⁵

■ 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.⁶ Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.⁷

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.⁸ When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorneys fees will be awarded against the agency if a violation of the Act is proven.

An attorney 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.⁹

■ 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.¹⁰

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.¹¹

"Action taken" is not only an actual vote, but also a collective decision, commitment or promise by a

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.



Practice Tip:

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

Practice Tip:

Training and exercising good judgment can help avoid Brown Act conflicts. If an arguably meritorious procedural challenge is raised, it may be more prudent to voluntarily re-notice and reconsider the action subject to the challenge.

majority of the legislative body to make a positive or negative decision.¹² 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.¹³ 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.¹⁴

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.

■ 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); and 54956 (special meetings). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 5490.1.
- 2 California Government Code section 54960.1 (b) and (c)(1)
- 3 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310
- 4 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 571
- 5 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1117-18
- 6 *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
- 7 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 8 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313, 1324-27 and cases cited therein.
- 9 California Government Code section 54960.5
- 10 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.
- 11 California Government Code section 54959
- 12 California Government Code section 54952.6
- 13 61 Ops.Cal.Atty.Gen.283 (1978)
- 14 California Government Code section 54959

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Appendix D

Sample Oath of Office

Municipal Code Excerpts

Chapter 2.28 Boards and Commission Generally

**Chapter 2.32 Planning and Economic
Development Commission**

Chapter 2.40 Recreation Commission

Mammoth Lakes , California, Code of Ordinances >> **Title 2 - ADMINISTRATION AND PERSONNEL >>**
Chapter 2.28 BOARDS AND COMMISSIONS GENERALLY >>

Chapter 2.28 BOARDS AND COMMISSIONS GENERALLY

Sections:

2.28.010 Appointments, terms, vacancies, and meetings.

2.28.020 Chairpersons and vice chairpersons—Selection—Terms.

2.28.010 Appointments, terms, vacancies, and meetings.

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

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

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

2.28.020 Chairpersons and vice chairpersons—Selection—Terms.

Unless otherwise provided by law, or by ordinances or resolution, each board and commission of the town shall annually at its first meeting held after June 30th, choose one of its number as chairperson and one as vice-chairperson. Each chairperson and vice-chairperson shall

have authority and perform such duties as are commonly associated with their respective titles, or any may be specially prescribed by law or by the laws or other rules of the board or commission. Vacancies in either such position occurring prior to July 1st may be filled as in the first instance, and a new chairperson or vice-chairperson may be chosen at any time any majority vote of all members of the board or commission.

(Prior code § 2.06.020)

Mammoth Lakes , California, Code of Ordinances >> **Title 2 - ADMINISTRATION AND PERSONNEL >>**
Chapter 2.32 PLANNING AND ECONOMIC DEVELOPMENT COMMISSION >>

Chapter 2.32 PLANNING AND ECONOMIC DEVELOPMENT COMMISSION ¹

Sections:

2.32.010 Created.

2.32.020 Chair—Committees—Staff.

2.32.030 Meetings—Rules of procedure.

2.32.040 Functions, powers and duties.

2.32.050 Rules—Records and meetings.

2.32.060 Compensation.

2.32.010 Created.

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

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

2.32.020 Chair—Committees—Staff.

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

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

2.32.030 Meetings—Rules of procedure.

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

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

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

2.32.040 Functions, powers and duties.

The functions, powers, and duties of the planning and economic development commission shall be all those functions, powers, and duties of a planning commission and board of zoning adjustment as provided in Chapters 3 and 4 of Title 7 commencing with Section 65100 of the

Government Code of the state (the planning and zoning law), as the same may be hereafter amended. The planning and economic development commission shall perform such other duties and functions as may be designated by the town council. All references in this Municipal Code to the public arts commission shall be deemed to mean the planning and economic development commission.

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

(Ord. No. 12-05, § 2, 12-19-2012)

2.32.050 Rules—Records and meetings.

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

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

2.32.060 Compensation.

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

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

FOOTNOTE(S):

--- (1) ---

Editor's note— Ord. No. 12-05, § 1, adopted Dec. 19, 2012, effective Jan. 20, 2013, changed the title of Ch. 2.32 from "Planning Commission" to read as herein set out. ([Back](#))

Mammoth Lakes , California, Code of Ordinances >> **Title 2 - ADMINISTRATION AND PERSONNEL >>**
Chapter 2.40 TOWN OF MAMMOTH LAKES RECREATION COMMISSION >>

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

Sections:

2.40.010 Definitions.

2.40.020 Created.

2.40.025 Composition.

2.40.030 Vacancies—Vote.

2.40.040 Powers and duties.

2.40.050 Receipt of donations.

2.40.060 Compensation.

2.40.070 Special requirements.

2.40.010 Definitions.

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

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

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

2.40.020 Created.

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

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

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

2.40.025 Composition.

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

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

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

2.40.030 Vacancies—Vote.

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

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

2.40.040 Powers and duties.

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

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

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

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

2.40.050 Receipt of donations.

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

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

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

2.40.060 Compensation.

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

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

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

2.40.070 Special requirements.

Unless otherwise provided by law, or by ordinance or resolution of the town council, at least four members of the recreation commission shall initially, and during their incumbencies, be bona fide residents and registered voters of the town. To capture a "Sphere of Influence," one member of the commission may reside outside of the town boundaries but between June Lake and Tom's Place, inclusive. No such member shall at appointment or during his or her incumbency be an employee of the town.

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

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

FOOTNOTE(S):

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Prior ordinance history: Ords. 90-01, 90-03, 91-05, 91-09, 92-13, 93-11, 00-08 and 00-12. ([Back](#))