Commissioner's Handbook

City of San Dimas, California

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COMMISSIONERS HANDBOOK
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INTRODUCTION

The quality of life and public safety is a major interest of San Dimas residents and the City Council. Commissioners provide an invaluable service in achieving a comfortable and safe community. Your advice will be welcomed by the City Council, City Manager and the department director with which you are affiliated.

The Commission Handbook has been prepared to aid in orienting you to the functions and activities of the advisory position to which you have been appointed. The handbook is designed to contribute to your general knowledge and understanding of public affairs and to aid you in fulfilling your commission responsibilities.

PURPOSE OF COMMISSIONS

A Commission, Board or standing Committee is established by ordinance or resolution to serve as an on-going advisory group to facilitate public input and citizen participation in the operations of the City. The City Council has the final decision-making authority on any issues dealing with service delivery and the expenditure of city funds.

Appointment to a Commission, Committee, or Board is a privilege and an honor which signifies the City Council's confidence in your desire to participate and serve. It demonstrates the Council's desire to have the benefit of your guidance and participation in the discussion of matters that impact the quality of life and operations of the City.

As a member of one of the City's Commissions, Committees or Boards you will focus upon community needs that require your understanding, dedication, enthusiasm, vision, and experience.

As an advisor to the City Council, you must be continually aware that the decisions formed by that body, even after receiving and evaluating your recommendations, are not easily made. The Council has the ultimate political and legal responsibility for the conduct of local government and the welfare ofthe entire community. Yours is an important role in assisting the City Council to fulfill its obligations to our citizens.

Participation on a Commission or Committee can be a satisfying and challenging experience, as well as a responsibility. It provides an opportunity to become intimately aware of the operating policies and issues of municipal government in general, a specific departmental unit, and programmatic areas within the purview of your respective Commission, Committee, or Board. It personifies citizens' participation in their community. It gives you an opportunity to play a vital role in the communication process between citizen and elected representatives.

A challenging and meaningful experience awaits you! Immediate satisfaction should come from the sense of a coordinated effort in sharing your thoughts and

insights with those of your fellow commissioners as you deal with a variety of conditions, issues, and situations in our City.

Even more rewarding, satisfaction will come as you learn more of the City operations, its responsibilities, and how to be an effective participant in your city government. It must be recognized that not all of the recommendations made by the advisory Commissions, Committees, or Boards will be accepted. Recommendations are generally advisory, and declining the Commission's advice in a given situation does not imply lack of confidence or disinterest in the advisory bodies' decisions. Those receiving the advice must weigh it against other information and considerations as they reach the decisions for which they are ultimately responsible.

SECTION I

GENERAL INFORMATION ABOUT SAN DIMAS

A. HISTORY OF SAN DIMAS

The City of San Dimas is a general law city incorporated on August 4, 1960, located approximately 30 miles east of Los Angeles. The city has a four-member City Council and Mayor elected by direct vote of the people. The City is approximately 15 square miles in area with a population of approximately 34,079. The City has a Council- Manager form of government.

San Dimas is a community whose historical roots go deep into the nineteenth century. The first Americans arriving in the locality presently known as San Dimas were a band of explorers headed by Jedediah Strong Smith who camped at a cienega, later called Mud Springs, in 1826. In 1837, two Spanish Dons, Ignacio Palomares and Ricardo Vejar, came into these vast semi-arid and wilderness pastures. Their immense land grant was christened Rancho San Jose and was range for great herds of cattle.
Outlaws operating from inaccessible haunts in a canyon often made raids on these cattle, and Palomares, expressing his anger, referred to the outlaws as Dismas, the repentant thief on the cross. The Don's allusion suggested a name for the canyon – "San Dimas Canyon." The City of San Dimas assumed its name from the canyon.

Since its incorporation in 1960, the thoughtful and steady growth of San Dimas has transformed the City from an essentially rural to a well-balanced community offering quality residential living with opportunities for commercial and industrial.

An abundance of recreational facilities, including the 2,500-acre Frank G. Bonelli recreational area which lies within city boundaries, popular San Dimas Canyon Park, and nine neighborhood parks are available to citizens of San Dimas. City services are provided on an economical yet highly efficient basis. In addition, the school district is effectively working on the dual challenges of providing first-class education today, while laying the foundations for tomorrow's ever-increasing educational demands.

An impressive, state-of-the-art civic center houses all departments of city services, as well as providing meeting rooms for various community activities. The San Dimas Civic Center includes the City Hall, Stanley Plummer Community Building, the Senior Citizen/Community Center, and the Los Angeles County regional library. The expanded civic center includes a post office, Sheriff's Station, Fire Station and City Maintenance Yard.

B. THE CITY'S MISSION STATEMENT

In December, 1986, the City Council adopted a Mission Statement which guides and directs the policies of the City Council and day-to-day operations of City employees.

The City of San Dimas is committed to excellence in the planning of the community with due consideration for the physical and social environment. The City Council and all city employees are committed to well-maintained facilities and to being responsive to the needs of residents by providing necessary programs.

The City recognizes that its function is to serve the San Dimas residents and businesses and to address their concerns in a cooperative and courteous manner. San Dimas acknowledges that the community has a character which is enhanced by the preservation of its history, historical buildings, and terrain. The City serves as a resource giving all people a sense of belonging to the City through programs, organizations, and activities.

SECTION II

GOVERNMENT AND STRUCTURE

A. CITY COUNCIL

The residents elect four of their fellow citizens to the City Council for overlapping four- year terms. The Mayor is directly elected for a two-year term. The Mayor presides at the City Council meetings and has one vote in the Council, the same as the other four members.

The City Council is the legislative body that makes all policy determinations for the City through the enactment of ordinances and resolutions. The City Council also adopts an annual budget to determine how the City will obtain and spend its funds; appoints all members to advisory boards and committees; the Mayor and Councilmembers represent the City on public and ceremonial occasions; and members carry out a great variety of other municipal responsibilities.

The City Council meets the second and fourth Tuesday of each month at 7:00 p.m. in the Council Chambers. The Council meetings are broadcast live and re-broadcast on KWST, Channel 3. They are also available on KWST Video on Demand library, Live Streaming and On-Demand Internet Streaming.

B. CITY MANAGER

The City Manager is appointed by the City Council and is the chief administrative officer of the City. It is the City Manager's responsibility to manage, direct, and coordinate the municipal services and business affairs of the City. The City Manager is responsible for the enforcement of all ordinances passed by the City Council and directs the various departments in the execution of Council policies. In order to keep the Council advised of the needs of the City, the City Manager makes or initiates studies on a multitude of issues and presents to the City Council alternative recommendations and solutions. The City Manager also is responsible for the preparation and presentation of the annual budget to the City Council for its review and adoption.

In accordance with Section 2.24.070D of the San Dimas Municipal Code, the City Manager, or their designee, is an ex officio non-voting member of all Commissions, Committees, or Boards created by the City Council or established by state law, with the right to participate in all deliberations or actions by such Commissions, Committees, or Boards.

C. CITY ATTORNEY

The City Attorney is appointed on a contract basis by the City Council. The City Attorney acts as legal advisor to the City Council, City Manager, the various City Departments and all City Commissions, Committees, and Boards. The City Attorney prepares and approves for legality all proposed city ordinances, resolutions, contracts, and other legal documents.

D. CITY CLERK

The City Clerk is appointed by the City Manager. The City Clerk administers the city- wide records management program and is responsible for the care and custody of all official records and documents of the City. Those records include all City and Agency deeds, contracts, leases, ordinances, resolutions, minutes, and the Municipal Code. The office publishes public notices and ordinances as required by law and assists staff and public in

researching information. The City Clerk manages public inquiries and relationships and arranges for ceremonial and official functions.

The City Clerk is the local official who administers democratic processes such as elections, access to city records, and all legislative actions ensuring transparency to the public. The City Clerk and City Attorney act as the compliance officers for federal, state, and local statutes including the Political Reform Act, the Brown Act, and the Public Records Act.

E. ADMINISTRATIVE SERVICES DEPARTMENT & CITY TREASURER

Administrative Services includes Finance, Budget, Accounting, Human Resources, Information Technology, Franchise and Contract Management, Risk Management, Overnight Parking, Transportation, and Economic Development.

The City Treasurer is responsible for managing the City's financial resources.

F. DEPARTMENT OF COMMUNITY DEVELOPMENT AND DEVELOPMENT SERVICES

The Community Development Services Department includes: Planning, Building, Housing and Safety and Code Enforcement. The Planning Division is responsible for long-term planning of the community, development review, subdivision review, and environmental review. The City Engineer provides civil engineering services for the City, such as reviewing proposed construction, drainage, and setting standards for infrastructure (e.g. streets and storm drains). The Building & Safety Division is responsible for administering and enforcing the Uniform Building Codes and the construction section of the San Dimas Municipal Code to ensure minimum standards to protect life and property through plan checks, permit issuance, and inspection. The goal of the City's Code Enforcement program is to promote and maintain a quality living environment for residents. Housing administers programs and services related to the mobile home park, senior housing, and other federal, state or local community development and housing programs. City Codes are developed to promote the health, safety, and welfare of the public. The department also is involved in special projects, such as open space preservation.

G. DEPARTMENT OF PUBLIC WORKS

The Department of Public Works is responsible for administering the City's Public Works program and providing engineering functions. The Department is divided into two divisions: Engineering and Maintenance.

The Engineering Division is primarily responsible for the design, preparation and checking of plans for all facilities within streets' rights-of-way, including those within private developments, and City-owned property. The Division prepares necessary plans, designs and specifications involving streets, storm drains, sewers, parks, and parkways.

The Maintenance Division maintains the cleanliness of all public streets, alleys, and storm drains, and is responsible for the maintenance and repair of City streets, sidewalks, curbs, and gutters. The Division is also responsible for the upkeep of City vehicles and equipment.

H. DEPARTMENT OF PARKS AND RECREATION

The Department is comprised of three divisions: Recreation Services, Landscape Maintenance (includes the Community Forest), and Facilities Maintenance.

The Recreation Services activities include recreation classes for adults and children, adult and youth sports programs, teen and senior citizen programs, special events, and excursions. The City's Swim and Racquet Club is the responsibility of this department, as is scheduling of the Sports Plex, a major athletic facility located at San Dimas High School.

The Facilities Maintenance Division cares for all city buildings, including routine custodial care and preventative maintenance as well as the scheduling and reservation of public rooms.

The Landscape Maintenance Division is responsible for the upkeep of all City parks, trees, parkways, medians, and grounds landscaping.

I. PUBLIC SAFETY

Law enforcement services are provided to the City of San Dimas by contract service with the Los Angeles County Sheriff's Department. As a part of that service, the Sheriff's Department maintains a station here in San Dimas located at 270 S. Walnut Avenue. Law enforcement services provide patrol operations, special assignment deputies, traffic enforcement, crime prevention activities, helicopter service, investigations, and jail operations. Additionally, the City has deployed Flock license plate reading cameras to leverage technology in protecting the community.

Fire services in the City of San Dimas are provided by the Los Angeles County Fire Department through its Fire District with dedicated property tax assessment. The Department provides full fire protection services including air and wildland fire support, emergency medical, and fire prevention. The Department also has countywide resources that may be called upon if needed.

Regional emergency planning and operations are performed by a regional arrangement with Area D Disaster Management. Area D provides coordination, training, and response assistance before, during, and after an emergency event or disaster. The City also created a Community Emergency Response Team with formal recognition as disaster service workers to support City efforts to prepare and respond to emergencies. The City maintains a Safety Element within its General Plan which supports the organization of residents to prepare for disasters.

SECTION III

COMMISSIONS COMMITTEES AND BOARDS

The City highly values the input and participation of its community members serving on a Commission, Committee, and Board, and it is beneficial to provide actionable input to the City Council and City staff. To this end, the scope of each Commission, Committee, and Board will be interpreted broadly, and the input, perspective, and recommendations of each Commission, Committee, and Board should be weighed and considered by the City Council and City staff.

The City Council is assisted by seven citizen advisory commissions, committees, and boards. These bodies are charged with the following responsibilities:

- Advise the City Council and City Manager on matters within their area of responsibility and interest, as prescribed by the City Council and its ordinances and resolutions.
- Help focus attention on specific issues and concerns within their scope of responsibilities and recommend actions and alternatives for Council consideration.
- Act as channels of communication and information between City government, the general public, and interest groups.
- Consider a variety of viewpoints and determine a consensus to provide direction toward achievement of citywide goals and objectives.
- Encourage broad citizen participation in the definition and formulation of City goals and actions for their achievements.

Each Commission shall have a nonvoting position for any interested student applicant who is a resident in the City of San Dimas starting at age 16 but under the age of 21. They will serve one-year term increments from date of appointment and will be selected by City Staff in collaboration with the local schools.

The Commissions, Committees, and Boards and their meeting schedules are as follows:

A. DEVELOPMENT PLAN REVIEW BOARD

The Development Plan Review Board (DPRB) reviews applications for site design, makes recommendations to the Planning Commission regarding the approval or disapproval of architectural elevation and conceptual landscaping plans for development projects and approves final working drawings consisting of site plans, elevations and various architectural drawings, and suggests modifications or imposes conditions in accordance with the standards set forth in the City's Municipal Code (Title 18 beginning at Section 18.12.020). The Code charges the DPRB with ensuring that development preserves the character and natural beauty of the City and complies with the requirements of the Municipal Code and the General Plan.

DPRB also functions as the License and Permit Hearing Board of the City and has the power to grant all permits required by Chapters 5.28, 5.32, 5.36 and 5.68 of the Municipal Code and to revoke or suspend any permit or license granted by DPRB.

The DPRB includes four public members, including one Planning Commissioner, one member appointed by the Chamber of Commerce and two members appointed by the City Council. The other members of the Board are the City Manager, Director of Community Development and Director of Public Works or their designees. The staff liaison to the DPRB is the Senior Planner.

B. EQUESTRIAN COMMISSION

The Commission shall review and make recommendations to the City Council concerning issues that impact the equestrian community; reviews the City's equestrian trail system and recommends improvements and new trails.

The Commission meets on the first Tuesday of odd months, at 6:00 p.m. in the Council Chambers Conference Room.

The Commission shall consist of five members who will be appointed to two-year terms with a maximum length of service of two full consecutive terms. The staff liaison to the Commission is the Director of Parks and Recreation.

C. PARKS AND RECREATION COMMISSION

The Commission reviews plans and programs relating to existing and new parks; and makes recommendations to the City Council regarding the development of recreation activities within the community.

Commission meetings are held on the third Tuesday of odd months, at 6:00 p.m., in the Senior Citizen/Community Center meeting room.

The Commission consists of five members, all of whom, will be appointed to two-year terms with a maximum length of service of two full consecutive terms. The staff liaison to the Commission is the Director of Parks and Recreation.

D. PLANNING COMMISSION

The Planning Commission participates in the administration of the zoning laws and policies of the City. The Commission makes recommendations to the City Council regarding land use, zoning; reviews proposed development projects, and advises as to the overall development and maintenance of the General Plan of the City. The Commission also conducts necessary public hearings to administer the planning laws and policies of the City and acts on applications for zoning amendments, conditional use permits, variances, subdivisions, and other related functions as may be assigned by the Council.

The Commission's powers and duties are specifically enumerated in State planning law (Government Code Section 61500 et seq.) and in the City's Municipal Code (Section 2.40).

There are five members of the Planning Commission who serve two-year terms with no maximum length of service. The regular public meetings of the Planning Commission are held the first and third Tuesdays at 7:00 p.m. in the Council Chambers. The staff liaison to the Commission is the Director of Community Development.

E. PUBLIC SAFETY COMMISSION

The Commission receives presentations and updates on a variety of public safety topics offering their observations and thoughts; enlists and represents the community interest to

support the work of law enforcement, crime prevention, and other public safety issues.

The Commission generally meets the third Tuesday of odd months, at 5:30 p.m. in the Council Chambers Conference Room.

The Commission is composed of five members appointed by the City Council and two members that serve as members of the San Dimas Sheriff's Station Civilian Advisory Board.

Commissioners are appointed to two-year terms with a maximum length of service of two full consecutive terms with the exception of appointees from the Civilian Advisory Board who serve at the discretion of the San Dimas station Captain. The staff liaison to the Commission is the City Manager or designee.

F. SENIOR CITIZENS COMMISSION

The Commission shall review plans and programs for all activities relating to senior citizens; and make recommendations to the City Council on appropriate policies and programs to involve and to benefit senior citizens throughout the community.

The Commission meets the first Thursday of odd months of the year, at 6:00 p.m. in the Senior Citizen/Community Center meeting room.

The Commission shall consist of five members who shall be appointed to two-year terms with a maximum length of service of two full consecutive terms. The staff liaison to the Commission is the Director of Parks and Recreation.

G. GOLF COURSE ADVISORY COMMITTEE

The Committee receives presentations and updates regarding the operations of the San Dimas Canyon Golf Course. They may make recommendations to the City Council regarding the operation of the Golf Course and Clubhouse and coordinate with the lessee responses to customer complaints regarding the maintenance, condition, and operation of the golf course, as needed.

The Committee consists of three members of the Recreational Facilities Authority; two representing the City of San Dimas and one representing the City of La Verne and two public members appointed by the San Dimas City Council. At their discretion, the cities may appoint an elected official or public member to serve as an alternate.

The two public members of the Committee shall be eligible to serve two consecutive two-year terms, with reappointment to be confirmed by Council at the conclusion of each term.

The Committee meets quarterly, at the San Dimas Canyon Golf Course on the third Thursday of January, April, July and October at 7:30 a.m. The staff liaisons to the Committee are the City Manager and the Director of Parks and Recreation.

SECTION IV

COMMISSIONS, COMMITTEES AND BOARDS

A. NOMINATIONS AND APPOINTMENTS

Applications for commission, committee, and board appointments must be submitted to the City Clerk's office on the form established by the City Clerk. A separate application is required for each body to which the applicant is seeking appointment. Applications are maintained by the City Clerk's office in an active status for the calendar year in which they were submitted and the following calendar year if the application was received after November 1st, after which time they become inactive and new applications must be submitted if the applicant still wishes to be considered for appointment.

Effective upon approval of this Handbook and expiring with the 2026 Election Cycle a Zero Term Policy will be in place. Additionally, appointments for new Commissioners shall be six months from the date of certification and swearing in of the newly elected Councilmember on the 2nd Tuesday of that month, except for special elections and special circumstances.

Election Swearing In	**Seats 1 and 3**		
	Zero Term	Term 1	Term 2
April 2024	April 2024 – October 2024(2nd Tuesday)	October 2024 – October 2026 (2nd Tuesday)	October 2026 – October 2028 (2nd Tuesday)
Election Swearing In	**Seats 2 and 4 and Mayor**		
	Zero Term	Term 1	Term 2
July 2026	July 2026 – December 2026(2nd Tuesday)	January 2027- January 2029 (2nd Tuesday)	January 2031 – January 2033(2nd Tuesday)

All Commission, Committee, and Board appointments will be determined by a process identified by the City Council and provided as follows:

1. For a commission, committee, and board whose membership includes five City Council appointed positions (Equestrian, Parks and Recreation, Planning, Public Safety, and Senior Citizen commissions), each member of the Council shall nominate an individual for appointment to each respective commission, committee, and board.

    a. Applications will be submitted by potential appointees in the manner established in Section IV.A of this Handbook and the City Clerk.
    b. Applications will be listed in a City Council agenda packet as a nominated and to be appointed applicant. Applicants vital information will be redacted.
    c. Each respective City Councilmember making such a nomination will interview the applicant prior to consideration.
    d. All appointments listed on a City Council agenda will be considered as one action and not separated. In the case a member of the City Council desires to remove an

individual from appointment consideration, a member will motion for removal, second, and affirmative vote of the City Council with no less than three (3) votes. If Council rejects a Councilmember's 1st nomination to a commission, committee, or board, a 4/5ths vote is needed to reject the second nomination or any subsequent nominations of such Councilmember's appointment.

e. For administrative purposes tracking will be done by term and not the date of appointment.

2. For all other commissions, committees, and boards whose membership does not include five City Council appointed positions (DPRB, Golf Course Advisory, or other commission, committee, and board not listed), each appointment shall be set as follows:
   a. All appointments will be made at the 2nd City Council meeting in August with a September 1st effective date.
   b. Applications will be submitted by potential appointees in the manner established in Section IV.A of this Handbook and the City Clerk.
   c. The Mayor will interview each candidate and make a recommendation to the City Council for consideration for appointment, the application will be listed on a City Council agenda as a nominated and to be appointed applicant, and the recommendation will be presented to the City Council. Applicants vital information will be redacted.
   d. All appointments listed on a City Council agenda will be considered as one action and not separated. In the case a member of the City Council desires to remove an individual from appointment consideration, a member will motion for removal, second, and affirmative vote of the City Council with no less than three (3) votes.

When a vacancy occurs, a notice shall be published and applications solicited. If the number of applicants does not exceed the number of commissions, board or committee vacancies, the application deadline may be extended. After completing interviews of the applicants, the City may choose to extend and continue the recruitment process. An applicant is appointed to fill that vacancy by the affirmative vote of the majority of the City Council. Appointments to newly created advisory bodies are made in the same manner.

It should be noted that appointment to some City commissions, committees, or boards is recognition of expertise and interest in a specific area as well as an honor bestowed upon a citizen. Members of an advisory body serve at the pleasure of the City Council and may be removed from their appointment at the Council's sole discretion. All appointees must be registered to vote in the City of San Dimas, or in their City of residence if the applicant is appointed to a body that accepts non-San Dimas appointees.

Pursuant to policy approved in 2001, any members of a Commission as specified in Section IV.A.1, cannot concurrently serve on two or more commissions. Members of a commission may serve on another committee or board as determined by the City Council.

B. TERM OF OFFICE

With the exception of the Planning Commission and Development Plan Review Board, candidates are appointed to a term of two years and can serve a maximum of two terms or as otherwise specified under Section III. After serving two consecutive terms, Commission, Committee, or Board members must wait one year before being eligible to reapply for service on the same commission, committee, or board. If they serve one year or longer of an unexpired term, it is considered a term and therefore, are eligible to serve one additional term.

Planning Commissioners are appointed to two-year terms; however, there are no limits to the

number of terms that members may serve.

Development Plan Review Board members are also appointed to two-year terms; however, there are no limits to the number of terms that members may serve.

The City Clerk shall notify the City Council of expiring terms of office for any member presently serving on a Commission, Board or Committee. Upon receipt and review, the City Council may reappoint an eligible member; fill the vacancy from an existing list of active applications; or direct the City Clerk to advertise the vacancy.

C. APPOINTMENT OR ELIGIBILITY OF FORMER EMPLOYEES

To be eligible to serve on a Commission, Committee, or Board, former employees must wait one year after being discharged from regular or part time City service.

D. APPOINTMENT OF EMPLOYEE'S RELATIVE

It shall be the Commission, Committee, or Board applicant's responsibility to disclose any relation to a current city employee. Employed relative is defined as a relation to either the applicant or the applicant's spouse as follows:

Relative of Commissioner	Relative of Spouse
Spouse	Brother
Brother	Sister
Sister	Parent or Step Parent
Brother's spouse	Grandparent
Sister's spouse	Child or stepchild
Grandparent	
Child or stepchild	
Child or stepchild's spouse	
Parent or Step Parent	

Furthermore, an appointed Commission, Committee, or Board member shall agree to abstain from any discussion or recommendation on matters that may directly or indirectly benefit, influence, or affect their employee relative. Commission, Committee, or Board member shall not become involved in any way to seek influence on behalf of the employee relative or become involved in any way with the supervision or work performance of the relative employee. Failure to follow these requirements and guidelines may lead to the member being released from their appointment.

E. APPOINTMENT OF RELATIVES OF CITY COUNCIL OR CITY MANAGER

No relative of a member of the City Council or of the City Manager shall be appointed to or serve on any Commission, Committee or Board. If any such relationship arises, the Relative's seat is immediately vacated. "Relative" shall be defined as a City Councilmember's or City Manager's:

- Spouse
- Sibling
- Child or Stepchild
- Child's spouse
- Brother's Spouse/Sister's Spouse
- Stepparent/Parent-in-law

- Grandparent/ Spouse's grandparent
- Grandchild
- Cousin
- Uncle or Aunt
- Nephew or Niece

F. SEEKING PERSONAL INTEREST OR BENEFIT

A Commission, Committee, or Board member shall not seek any personal interest or benefit from their participation or service. They must abstain from any discussion or recommendation on matters that may directly or indirectly benefit themselves, their local business, or the interest of any family member, friend or associate. Members are not to seek influence of other commissioners, committee members, board members or the city staff to obtain any personal interest or benefit for themselves, family, friends or associates. Failure to follow these requirements and guidelines may lead to the member being released from their appointment.

G. RESIGNATION AND REMOVAL

If an appointee resigns from office before the end of the term, a letter announcing the resignation shall be forwarded through the City Clerk to the Mayor. Copies will be forwarded to the City Council, the City Manager, and the commission, committee or board secretary.

The City Council may remove any member of a commission, committee, or board with a vote of three (3) City Councilmembers.

H. ATTENDANCE

It should be emphasized that regular attendance at meetings is critical to the effective operation of any commission, committee or board. Such attendance ensures a steady flow of communication and keeps everyone abreast of current topics under discussion. As a result, a member may be removed when absent from two meetings in a rolling year or when a pattern of repeated absences becomes apparent except in the case of illness or excused absences by prior permission of the commission, committee or board. Any removal is subject to ratification of the City Council. Nothing herein shall limit the City Council's sole discretion to remove any member of any commission, committee, or board at any time for any reason pursuant to Paragraph G.

An attendance report will be prepared and submitted by the City Clerk's Office quarterly to City Council. Three unexcused absences results in the automatic removal of a commissioner, committee member, or board member and starts the recruitment process by the Councilmember who nominated such member.

I. BENEFITS

Planning Commissioners shall receive a $50 per meeting stipend. No other Commissioners and Committee Members receive any monetary stipend.

J. INCIDENTAL EXPENSES

Any commission, committee, or board member who is required to travel in the performance of his or her duties, attend an authorized meeting or conference which is of benefit to the City shall be reimbursed for reasonable expenses incurred for transportation, meals, lodging and incidentals pursuant to the City's Travel Reimbursement Policy and has been pre-approved

through the budget process. It should be noted that spouses will not be covered for any such expenses.

In the event that a member purchases an item(s), with prior approval from city staff, for the benefit of that commission, committee, or board, or for a City-sponsored activity or event, a receipt for that item(s) must be submitted before the member may be reimbursed. All reimbursement requests must be pre-approved by the senior staff member assigned to the commission, committee or board.

Officials should recognize that some expenditures may be subject to reporting under the Political Reform Act and/or other laws, or may be prohibited altogether. All city expenditures are public records subject to disclosure under the Public Records Act.

Planning Commissioners are required to file Form 700-Statement of Economic Interests (GC § 87200)

K. ETHICS AND OTHER TRAINING

In order to meet the requirements of California state law (AB 1234), the City Council and Planning Commissioners, as well as all appointed advisory members of any body of the City that is subject to the provisions of the Ralph M. Brown Act ("Open meeting law") shall be required to receive no less than two hours of training in general ethics principles and ethics law at least once every two years, (or as frequently as the law may subsequently be amended to provide.) Newly appointed advisory members should complete the required ethics training within the first six months of appointment. Officials shall submit copies of their certification to the City Clerk within thirty (30) days of completion of the curriculum.

AB 1234, now California Government Code Section 53234 ,was signed into law on October 7, 2005. This law requires, among other things, that all local agencies that provide compensation, salary, or a stipend to, or reimburses the expenses, of members of a legislative body must provide Ethics Training to local agency officials by January 1, 2007, and every two years thereafter. The Council has determined such training shall be extended to and include all employees and members of advisory bodies, such as boards, commissions, and task forces.

Assembly Bill 1661, now California Government Code Section 53237, was signed into law on September 29, 2016. This law requires local agency officials to receive sexual harassment prevention training and education if the local agency provides any type of compensation to those officials, to be completed within the first year of appointment. The law also requires an entity that develops curricula to satisfy this requirement to consult with the city attorney regarding its sufficiency and accuracy.

The City Council and Planning Commissioners, as well as all appointed advisory members of any body of the City will also be required to participate in training on Rosenberg's Rules of Order, and Sexual Harassment within the first year of appointment.

Live training sessions are offered throughout the year and self-study courses are available through League of California Cities and the Fair Political Practices Commission at www.cacities.org and Local Officials Training Course. Follow the directions below:

- Click on the Institute for Local Government tab at the top
- Then select Ethics, Ethics Laws, and
- Click the self-study link on that page.

In addition, other training material and/or classes are available through the City Clerk's Office. If you have questions whether or not to attend an Ethics Training session, Rosenberg's Rules or Order, and/or Sexual Harassment training, please consult with your City staff liaison or City Clerk.

If you have questions whether or not to attend an Ethics Training session, please consult with your City staff liaison or City Clerk.

L. ROSENBERG'S RULES

Each commission, committee, and board will use Rosenberg's Rules to perform their meetings efficiently and effectively. Staff liaisons will advise their respective commission, committee, and boards on the appropriate meeting rules.

SECTION V

OPERATING PROCEDURES

A. REGULAR MEETINGS (California Government Code § 54954)

The commissions, committees, and boards will have an established meeting schedule for each year. Such meetings are considered regular meetings.

If it is known in advance that a quorum cannot be achieved, consideration should be taken to notify all members and persons interested in the business before the body. A notice must be posted by the secretary advising the public that the meeting has been canceled due to a lack of quorum.

If it is known in advance that there is a lack of business for the commission, committee, or board to address, a regularly scheduled meeting may be canceled. A notice shall be posted by the secretary within 24 hours of the cancellation, informing the public that the next regularly scheduled meeting has been canceled due to a lack of business.

B. ADJOURNED MEETINGS (GC § 54955)

If for any reason the business to be considered at the regular meeting cannot be completed, the body may then adjourn to a specified time and location. A notice announcing the adjournment must be posted in the standard location within 24 hours of the adjournment. This type of meeting is referred to as an adjourned meeting.

C. SPECIAL MEETINGS (GC § 54956)

Special meetings are those called by the advisory body in order to discuss an important issue that needs to be addressed outside of the regular meeting date and time by delivering personal notice to each member and to the public press and posted in City Hall at least 24 hours in advance of such special meeting. A special meeting may be called by 1) the Chair and Staff Liaison or 2) by concurrence of a majority of the board, commission or committee membership.

D. QUORUM

A quorum consists of a majority of the members of the seats on the commission at a meeting. A quorum is required to conduct business at any meeting, whether or not it is a regular, adjourned, or special meeting. The Staff liaison or Chair should be notified if a member knows in advance that he or she will be absent.

E. RALPH M. BROWN ACT (GC § 54950 et seq)

The Brown Act is a state law enacted in 1953 that requires all local government business to be conducted in open and public meetings, with the exception of a limited number of defined subjects that may be discussed in a closed session of a local government body. Those exceptions to open and public meetings include, but are not limited to, discussions of personnel matters, pending, proposed or anticipated litigation with the City Attorney where open discussion would be detrimental to the City's interest.

The purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of democratic process by secret legislation by public bodies.

The Brown Act applies to the legislative body including, but not limited to the City Council, Commission, Committee, or Directors, and shall include any board, commission, committee or other body on which officers of a local agency serve in their official capacity as members. It includes, but is not limited to, the Planning Commission, Equestrian Commission, Parks and Recreation Commission, Public Safety Commission, Senior Citizens Commission, Development Plan Review Board, Golf Course Advisory Committee, Oversight Board, and other ad-hoc or permanent boards or commissions of a local agency.

The Commission shall provide for the conduct of business by the Commission, the time and place for holding regular or adjourned meetings, and a brief description of each topic to be discussed. The agenda for the meeting must be posted in a public place in public view a minimum of 72 hours before a regular meeting and 24 hours prior to a special meeting. Furthermore, no discussion or action may be taken on those items which are not listed on the meeting agenda. No action may be taken on an item at any meeting without a quorum.

The Brown Act expressly prohibits serial meetings. Typically, a serial meeting is a series of communications, each of which involve less than a quorum of the legislative body, but which taken as a whole involves a majority of the body's members. This would also include situations in which technological devices are used to connect people at the same time. Commissioners, Committee Members, and Board Members are also required to disclose any communication they have had regarding an agenda item.

Minutes of the proceedings must be taken to be entered into the public record.

F. FORMAL PUBLIC HEARING

A formal public hearing is one that must be conducted according to state laws or City ordinances and is designed to solicit comment from the general public.

An official Notice of Public Hearing will be published in a local paper of general circulation.

G. HEARING PROCEDURES

Hearings held by an advisory body should be fair and impartial. If a member is biased or has a personal interest in the outcome of the hearing, that member should disqualify himself/herself and not participate.

Persons and/or groups who may be affected by the subject of the hearing should be given sufficient notice of the time and place of the hearing and a reasonable opportunity to be heard. They may be represented by counsel and be permitted to present oral and documentary evidence. They should also be permitted to rebut any statements made by others.

At the appropriate time, the chair should open the hearing and explain to the audience the hearing procedures. If there are numerous persons who would like to participate, and all represent the same views and opinions, the chair may ask that a spokesperson be selected to speak for the group. If this arrangement cannot be made, the chair may restrict each speaker to a limited time (generally three minutes) so all may be heard. Irrelevant and off-the-subject comments should be ruled out of order by the chair.

The usual procedure after the hearing has been opened is for staff to present the staff report, followed by commissioners' questions relating to the report. Proponents should be given the opportunity to present their case first. This is followed by an opportunity for opponents to present their case. The proponents then have an opportunity to offer a rebuttal to arguments against their case.

After all interested persons have had an opportunity to speak the hearing is closed, ending audience participation. Commission, committee or board members may discuss the proposal and take an action on the proposal.

A summary of the hearing proceedings is prepared by staff and forwarded to the City Council for their information. In certain instances, recommendations made to the City Council should be in the form of a resolution (i.e. Planning Commission recommendations for zone changes.)

H. MOTIONS

When a member wishes to propose an idea for the body to consider, the member must make a motion. This is the only way an idea or proposal from a member may be presented to the body for discussion and possible action. A motion goes through the following steps:

1. The member asks to be recognized by the Chair.
2. After being recognized, the member makes the motion (I move…)
3. Another member seconds the motion.
4. The Chair states the motion and asks for discussion.
5. When the Chair feels there has been sufficient discussion, the debate is closed (i.e. "Are you ready for the question?" or "Is there any further discussion?").
6. If no one asks for permission to speak, the Chair puts the question to vote.
7. After the vote, the Chair announces the decision ("The motion is carried" or "The motion fails," as the case may be.)

Phrasing a motion is often difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion (Step 4) the member making the motion may rephrase or withdraw it. After an amendment, the amended motion must be seconded and then voted upon. It is particularly important when a motion is amended that the Chair restates the motion in order that members are clear as to what they are voting on.

In making a motion, members should try to avoid including more than one proposal in the same motion. This is especially important when members are likely to disagree. If a member would prefer to see proposals divided and voted upon separately, the member should ask the Chair to divide the motion. If other members do not object, the Chair may proceed to treat each proposal as a distinct motion to be acted upon separately. The request to divide may also be made by motion.

I. ADJOURNMENT

When a commission, committee, or board has finished its business, a motion to adjourn is in order. This motion is not debatable; therefore, it is the duty of the Chair to see that no important

business is overlooked.

If the body wishes to meet before the next regularly scheduled meeting, a motion may be made to adjourn the meeting to a designated time and place. If this is done, a notice of the adjourned meeting must be posted on the door of the regular meeting place within 24 hours after the time of adjournment.

J. AGENDA

Any item that a member wishes to include on a future agenda must first be agreed upon by two members of that commission, committee, or board. Requester should provide sufficient detail to determine the nature of the topic to be discussed. Staff may add more detail as reasonable to inform discussions. Nothing shall restrict the Chair and Staff liaison from adding items to the agenda as appropriate to execute the commission, committee, or board's charge.

In accordance with the Ralph M. Brown Act, no action may be taken on an item that has not been placed on the noticed agenda, except when it has been determined by majority vote that the matter in question constitutes an emergency (GC 54956.5) or there is a need for immediate action which cannot reasonably wait for the next regularly scheduled meeting (GC 54954.2(b)(2)). And that the need to act arose subsequent to the agenda being posted.

K. MINUTES

The staff liaison is responsible for the preparation of minutes of all commission meetings. Written minutes, upon approval by the commission, committee, or board constitute the official record of the actions taken and a summary of the important topics raised in the discussion.

Additions and corrections of the minutes may be made only in public meetings, with the approval of the body, and not by the private request of individual members, except for clerical errors. Minutes are not deemed official until approved by the Commission.

It is the policy of the City Council that minutes are not verbatim. They are, instead, action minutes, recording the essence of the decisions made and significant action taken.

For the convenience of the recording secretaries, meetings may be recorded in order to facilitate the preparation of minutes. However, any recordings of meetings do not become part of official city records and can be destroyed at any time if the purpose for which it was made and retained was solely to facilitate the preparation of the minutes of the meeting.

Minutes of all meetings are to be forwarded to the City Council and the City Clerk after approval by the Commission.

L. AGENDA PACKETS

Agenda packets detailing the items of business to be discussed and any communications to be presented generally will be prepared by staff and delivered to the members of the body within a reasonable amount of time before the meeting, but no later than 72 hours prior to the meeting. In order to be prepared for meetings, members should read these packets and contact the Chair or staff if there are any questions regarding information presented in the staff reports.

M. POLITICAL REFORM ACT

The Political Reform Act states that public officials shall perform their duties in an impartial manner, free from bias caused by their own financial interest or the financial interests of persons who have supported them.

The Political Reform Act establishes regulations regarding Conflicts of Interests and Campaign Receipts and Expenditures.(Gov. Code Sections 87100-87350)

In accordance with State law, City Officials, Planning Commissioners, and employees are required to annually disclose all financial interests that may be affected by decisions made in their official capacity, including investments, real property and income.
Disclosure is made by filing Conflict of Interest statements with the Fair Political Practices Commission upon assuming office, on an annual basis, and when leaving office. Filed forms are public documents and must be made available upon request.
(Gov. Code Section 81002(c))

Planning Commissioners must also disqualify themselves from making or participating in making or influencing any governmental decision that will have a foreseeable material financial effect on any economic interest of the Council Member, Planning Commissioner, or certain family members.

N. CITY OF SAN DIMAS MUNICIPAL CODE

The Municipal Code consists of codified ordinances, as well as the Zoning Code that define the regulations and laws that help guide how the city operates and functions. The purpose of the code is to make laws accessible and provide documentation of past legislation. It is available on the City's website at www.sandimasca.gov and a copy in the Office of the City Clerk.

O. AREA OF INTEREST

When a commission, committee, or board is established by the City Council, the specific duties of that body are set forth in the ordinance or resolution that creates it. It is implicitly understood that the advisory body is limited to the consideration of those matters which are specifically assigned to its jurisdiction. In special or unusual circumstances, when interest spreads into an area beyond its jurisdiction, the commission, committee, or board should formally request specific authorization from the City Council to consider the matter and to formulate recommendations in that area. In some cases, the Council will call a joint meeting or study session with a commission or committee to explore an issue or issues in depth.

P. SUB-COMMITTEES

- In certain instances, a commission, committee, or board may determine that it is necessary to form a sub-committee to study a particular matter relating to that body in some detail.

- A sub-committee may be formed by a majority vote of the commission, committee, or board members taken at a regular meeting but may not be comprised of a majority of the members.

- Appointments to the sub-committee are made by the consensus of the commission, committee, or board.

- A sub-committee is a temporary committee which will last no longer than six months.

- After the completion of the particular study and presentation of recommendation to the commission, committee, or board, the sub-committee should be disbanded.

Q. ROLE OF CHAIR

It is incumbent upon the Chair of the commission, committee, or board to ascertain the responsibility of his/her advisory body and to limit the discussion and deliberation to appropriately assigned areas of responsibility.

The Chair exists to encourage the input of ideas, to guide discussions in a logical and orderly fashion, and to overall facilitate the decision-making process. He or she should clarify ideas as they are discussed and repeat motions made in order that all members fully understand the wording of the item on which they are voting.

The Chair and the staff may be in contact prior to each regularly scheduled meeting in order to coordinate activity pertaining to items pending before the commission, committee or board.

SECTION VI

RELATIONSHIPS

A. INTERACTION WITH STAFF

The City's staff works for and is responsible to the City Manager and it is therefore the City Manager's responsibility to allocate staff's time and efforts. Commissioners, committee members, or board members should not attempt to direct or decide the priority of work for the department or the individual staff person. These bodies should, however, set priorities for their own agendas in order that staff may best use the time available for commission, committee, or board business. The Commission, committee, or board may request information or research on a matter from City staff that either does not result in more than roughly an hour of staff time or in the case more time is required, is weighed by the appropriate department head against priorities, workload, and fit with the recommendations or actions City staff are considering for City Council. At any time, the City Manager or department head may bring a commission, committee or board request to the City Council for review and consideration.

In contacting city personnel on official business, the proper channel is through the staff liaison assigned to the commission, committee, or board.

It is not expected that every staff recommendation will be followed; but, based on the technical knowledge of staff personnel, consideration should be given to their proposals and recommendations. The commission, committee, or board may choose to agree or disagree with a staff recommendation. In the latter case, staff has the option of including his/her recommendations in the staff report to the City Council. Any differences in opinion will be discussed at the Council meeting.

The City Council expects that a mutually respectful and professional relationship is maintained between the staff personnel and the commission, committee, or board. The effectiveness of an advisory body is hampered by internal tension and personality conflicts. In the event a conflict does arise between an individual member and the staff, the member should approach the chair who will, in turn, try to mediate the conflict. If the problem cannot be solved at the lowest level, the Chair will approach the head of the department to which that commission, committee, or board is related. As a last resort the matter will be brought to the attention of the City Manager. However, it should be emphasized that every effort should be made to maintain a respectful and professional relationship with staff in order to facilitate and enhance the body's operation and effectiveness.

A City body is comprised of a diverse group of people and it is inevitable that not everyone will agree on an issue all of the time. However, all efforts should be made to maintain amicable relations among the individual members. Personality conflicts only hamper an organization's effectiveness. Nevertheless, in the event that a personality conflict does arise between individual members, it is the chair's responsibility to try to mediate and resolve the problem. If the conflict cannot be resolved, the chair should approach the staff liaison to the commission, committee or board.

B. INTERACTION WITH CITY COUNCIL

The primary responsibility of commissions, committees, and boards is to advise and make recommendations to the City Council. It is the Council's role to absorb the advice and recommendations offered by numerous sources and to make decisions to the best of its ability. Because the City Council is in such a position to see the broader context and is aware of other concerns, it may not always follow the recommendation offered by individual commission, committees, and boards.

Although there may be disagreement with the City Council on an issue, once the Council has established its position, the commission, committee, or board, or individual members should not do anything contrary to the established policies and programs adopted by the City Council.

Business transacted with the Council should be in writing from the body as a whole and forwarded through staff who will then forward it to the City Manager's office. The City Manager will review all reports, findings, and recommendations and forward to the Council those matters within its province.

When a member of an advisory body addresses the City Council at a public meeting, it should be made clear whether he/she is speaking on behalf of the advisory body or as an individual citizen. Either the Chair or another member appointed by the commission, committee, or board to represent the body shall speak on behalf of the body to the City Council. Each Commission will be responsible to present an update to the City Council at a regular scheduled City Council Meeting on an annual basis.

Commissions, committees, and boards and their individual members should not attempt to predict Council action, either publicly or privately. However, they may and should interpret Council policies or identify trends in Council thinking.

C. INTERACTION WITH THE PUBLIC

Members are encouraged to become aware of public opinion relating to their field of influence. They should welcome citizen input at meetings and ensure that the rules and procedures for these public meetings are clearly understood.

Members should conduct themselves at public meetings in a manner that is fair, understanding, and gracious. Members should be considerate of all interests, attitudes, and differences of opinion. They should also take care to observe the appearance as well as the principle of impartiality.

Members should not accept gifts from applicants or other persons concerned with matters which have been or might come before the commission, committee, or board.
Board members, Commissioners, and Committee members should always remember their public or private statements, including in the news media or on social media, may be perceived as representing the City or as being made on behalf of the City, or may be perceived as representing official City policy.

Board members, Commissioners, and Committee members should take care not to state or imply that their views, expressions of opinion, or other statements are an official policy,

statement, position, or communication of the City or represent the views of the City or any City officer, employee, board, commission, or committee, unless specific permission has been given to the Board member, Commissioner, or Committee member by the City Council or the City Manager to speak on behalf of the City.

Board members, commissioners, and committee members should explicitly clarify that their statements are their sole positions and views, and not representing the City, boards, commissions, or committees when such statements could reasonably be interpreted to be official policy, statement, position, or communication.

In respect to matters before a board, commission, or committee, such body may appoint a member of the body to represent its position to the City Council or on behalf of the board, commission, or committee, but such representation shall not conflict or imply that the position is a position of official policy, statement, position or communication of the City unless such was approved by the City Council.

SECTION VII

COMMISSION EFFECTIVENESS

Organized groups exist to complete certain tasks and to achieve certain agreed upon purposes and goals. A commission, committee, or board is a set of individuals held together by a web of inter-relationships and feelings. Members have feelings about themselves, about the group and the group's tasks.

The nature and intensity of these feelings set the "climate" of the advisory body at any given moment. A positive climate encourages member involvement and responsibility to take actions.

Optimum participation is achieved when members experience encouragement for their contributions, freedom to honestly and freely express their feelings and freedom from internal group strife which interferes with carrying out the body's tasks.

Optimum productivity is achieved when the body's stated tasks are understood. Members should keep tasks visibly and clearly defined.

A. FUNCTIONS AND BEHAVIORS

Effective commission, committees and boards usually pay attention to the following functions and behaviors:

- Prioritizing tasks
- Anticipating problems
- Analyzing problems
- Setting clear objectives
- Developing actions-options
- Deciding
- Active listening
    - Not interrupting
    - Listening to feelings
    - Not judging others
    - Summarizing and feeding-back
    - Supporting your colleagues
    - Accepting their ideas
    - Showing warmth
    - Creating opportunities to involve members
    - Building on members' ideas
    - Encouraging different ideas
- Confronting what's happening
    - Questioning your and others' assumptions
    - Dealing directly with conflict

    - Focusing attention on the idea, not the person
- Diagnosis Skills
    - How are you working together?
    - Who isn't involved?
    - Where is your help needed?
    - When are YOU going to help?

B. EFFECTIVE CONFLICT MANAGEMENT

Public hearings or citizen input meetings are difficult to manage. Participants are usually highly motivated and often nervous. When you have a group of potential adversaries in one room, the possibility of uncontrolled conflict is very high. As commission, committee, and board members, your role is to guide conflict to positive results, not to eliminate it, which is usually not possible.

The following suggestions should help manage conflicts and confrontations effectively:

- Anticipate conflicts by doing your homework so you can concentrate on the dynamics of the meeting rather than learning about the topic at hand.

- Treat all sides fairly. Set the rules of the hearing early and make sure everyone abides by them without exception.

- Explain carefully the purpose of the public hearing and what action is expected at the conclusion of the hearing. Insistence on playing by the rules is your best tool for conflict management in public hearings.

- All persons speaking should clearly identify themselves, not only for the record, but also so that you may address them by name. However, a public speaker is not required to identify themselves.

- Set an acceptable time limit for testimony (generally three minutes) and stick to it.

- Make decisions as promptly as possible. Many commission, committees and bodies get so bogged down in procedural distractions, petty details, and endless searches for more information that the issue never seems to get resolved.

- Try not to overreact to inflammatory comments. Most are expressions of frustration and do not require answers. Try to turn frustration to constructive avenues. Ask questions. Be specific if you can. Refer to the speaker by name. Reinforce areas where you agree. Do not return insult for insult. Your insults can turn the audience against you for your lack of control and unfairness.

- Try to avoid speaker-to-audience conversation. The purpose of a hearing is to help your commission, committee, or board act, not to engage in debate.

- If other members have questions of the speaker, permit these questions only during the speaker's time at the podium.

- Be careful not to prejudge the action of the commission, committee, or board. Use the hearing to gather necessary information about the project and individual desires concerning the proposal. Members should not express their views on the proposal until after testimony has ended. Their comments and questions should not suggest a position one way or the other.

- Once testimony has ended, each member should be invited to discuss their views on the proposal.

- View the public hearing as an example of basic democracy in action at the local level. Make it your personal goal to make the public hearing work.

SECTION VIII

APPROVALS AND MODIFICATIONS

The Commission Handbook will be approved by the City Council, and any changes proposed by the City Manager or requested by the City Council will be presented to the City Council for review and approval as requested.

CONCLUSION

The City would like to thank you for accepting this position and for devoting your time and effort to become actively involved in the affairs of your community. It is sincerely hoped that you will enjoy your participation in the governing process in the City of San Dimas as a member of one of its advisory bodies, and that you will feel totally free to call upon any of its representatives for advice, background information, or assistance.

It is with this in mind that this brief handbook has been prepared. Please consider it a guide as you begin your new duties as a member of an advisory body and not as an all- inclusive restrictive set of regulations.

Welcome aboard.

APPENDIX

A. Development Plan Review Board Description
B. Equestrian Commission Description
C. Golf Course Advisory Committee Description
D. Parks and Recreation Commission Description
E. Planning Commission Description
F. Public Safety Commission Description
G. Senior Citizens Commission Description
H. Rosenberg's Rules of Order
I. The Ralph M. Brown Act
J. Revision History

- **Resolutions List**
  - **i. 2021-24 April 27th, 2021**
  - **ii. 2023-14 July 11th, 2023**
  - **iii. 2024-25 May 14th, 2024**
- **Revisions List**

The Board shall be composed of four public members who shall be registered voters of the City, serve without compensation and be appointed upon the basis of three affirmative votes of members of the City Council. Two are appointed by City Council, one appointed by the Chamber of Commerce and one Planning Commissioner. The board also consists of the City Manager, Director of Community Development and Director of Public Works or their designee. Service on the Committee is voluntary.

Duties:

1. To act in an advisory capacity to the City Council in all matters pertaining to Planning matters;

2. To be empowered to assemble information on the problems and their solutions pertaining to all planning matters;

3. To be empowered on its own initiative to make recommendations to the City Council on matters within its purview;

Desirable Qualifications:

Suggested qualifications for DPRB members include, but are not limited to, the following knowledge and abilities:

1. Knowledge of architectural and landscape planning.

2. Willingness to research and report on issues, programs and policies relating to planning matters;

3. Willingness to assist in implementing projects as decided upon by the Planning Commission and/or City Council;

4. Ability to develop and maintain harmonious working relationships with Board members, the City Council, the public;

5. Willingness to attend meetings on a regular basis. Three unexcused absences in one year are generally grounds for dismissal from the board.

EQUESTRIAN COMMISSION

The Commission shall be composed of five members who shall be registered voters of the City, serve without compensation and be appointed upon the basis of three affirmative votes of members of the City Council. Service on the Committee is voluntary.

Each Commissioner shall be appointed to a two-year term with a limit of two terms. Commissioners cannot concurrently serve on two or more commissions. After term expiration, Commissioners must wait one year before being eligible to reapply for service on the same Commission.

Duties:

1. To act in an advisory capacity to the City Council in all matters pertaining to equine, equestrians and other citizen concerns of equestrian matters and their needs, including but not limited to the care of horses, establishment and maintenance of equestrian trails, establishment of equestrian programs and the preservation of the City's equestrian heritage.

2. To be empowered to assemble information on the problems and their solutions pertaining to all equestrian matters.

3. To be empowered on its own initiative to make recommendations to the City Council on matters within its purview.

4. To act to facilitate coordination between existing and proposed equestrian programs and provide for horse care.

Desirable Qualifications:

Suggested qualifications for Equestrian Commissioners include, but are not limited to, the following knowledge and abilities:

1. Knowledge of horse keeping through the ownership of a horse, involvement with equestrian projects and programs, and /or a demonstrated interest in equestrian matters.

2. Willingness to research and report on issues, programs and policies relating to equestrian matters.

3. Willingness to assist in implementing projects as decided upon by the Equestrian Commission and/or City Council.

4. Ability to develop and maintain harmonious working relationships with Commission members, the City Council, the public, and law enforcement agencies.

5. Willingness to attend night meetings on a regular basis. Three unexcused absences in one year are generally grounds for dismissal from the Commission.

GOLF COURSE ADVISORY COMMITTEE

Members of the Committee shall be selected as follows: Three members of the Recreational Facility Authority, two (2) members of the City Council of the City of San Dimas; one (1) member of the City Council of the City of La Verne and two (2) public members appointed by the City Council of the City of San Dimas.

Members must be residents of the cities and will be appointed to a two-year term with a limit of two terms. After term expiration, a member must wait one year before being eligible to reapply for service on the same Committee. Service on the Committee is voluntary.

The City Councils of the Cities of San Dimas or La Verne, at their discretion, may appoint an elected official or public member to serve as an alternate.

Duties

1) To act in an advisory capacity to the City Council in matters outlined on Committee agendas pertaining to the San Dimas Municipal Golf Course.

2) To act as a liaison between the City Council users of the Golf Course and its facilities.

3) To be aware of customer and patron experiences at the golf course and its facilities. Share that information and feedback at Committee meetings so that the operator may address them.

4) To assemble information on problems and their solutions to all matters concerning said Golf Course.

Membership

1) Any Committee member may be removed from the Committee at any time by the City Council of the City of San Dimas.

2) One of the two members of the City Council will serve as Chair for the Committee and will conduct the meetings.

Meetings:

1. The committee shall set its own meeting times.

2. Meetings shall be held at announced times and in public places.

3. All meetings shall be open to the public in accordance with the Ralph M. Brown Act.

PARKS AND RECREATION COMMISSION

The Commission shall be composed of five Commissioners who shall be registered voters of the city, serve without compensation and be appointed upon the basis of three affirmative votes of members of the City Council. Each Commissioner will be appointed to a two-year term with a limit of two terms, except the Commissioner from the sixteen to twenty-one age groups, who will serve a one-year term. Commissioners cannot concurrently serve on two or more commissions. After term expiration, members must wait one year before being eligible to reapply for service on the same commission.

Duties:

1. To advise the City Council on matters relating to the development and maintenance of public parks and recreation programs.

2. To represent the views of the citizenry relating to parks and recreation needs.

3. To consult with the professional staff in the development of parks and recreation programs.

4. To generally enlist community interest in human services, parks and recreation.

5. To perform any other acts related to the City's park and recreation needs as requested by the Council.

Desirable Qualifications:

1. Willingness to give due attention and study to recreation and park services as they affect the welfare of the people of San Dimas.

2. Ability to interpret the parks and recreation services to the community.

3. Willingness to take initiative in making studies and planning for future parks and recreation areas and facilities, as well as determining means of keeping present areas and facilities at an acceptable level.

4. Ability to develop and maintain harmonious working relationships with other commission members, the City Council, the public, the school district, service organizations, and sports organizations.
5. Willingness to attend regularly scheduled evening meetings, as well as special meetings. Three unexcused absences in one year may result in dismissal from the Commission.

PLANNING COMMISSION

The Planning Commission is an advisory body to the City Council which is responsible for directing the short- and long-range growth and development of the City through maintenance and implementation of the City's General Plan and associated specific plans.

The Commission shall be composed of five Commissioners who shall be registered voters of the City, and be appointed upon the basis of three affirmative votes of members of the City Council. Planning Commissioners are appointed to serve staggered two-year terms and receive a stipend of $50 per meeting. Commissioners cannot concurrently serve on two or more commissions.

Duties:

In order to implement the General Plan, the Planning Commission is empowered to administer the City's zoning laws, ordinances, rules and regulations which:

1. Regulate the use and appearance of buildings, structures and land.

2. Regulate signs and billboards.

3. Regulate location, height, bulk, number of stores and size of buildings and structures; the size and use of lots, yards, courts and other open spaces; the percentage of a lot which may be occupied by a building or structure; the intensity of land use.

4. Establish requirements for off-street parking and loading.

5. Establish and maintain building setback lines.

The Planning Commission also reviews environmental documents and capital improvement programs.

Desirable Qualifications:

A Planning Commissioner's primary job is to make land use decisions that are consistent with the policies and plans formally adopted by the City Council. Therefore, the first priority of a Planning Commissioner must be to develop decision-making skills and knowledge of City policies. It is not critical to have training in fields such as planning, architecture, law, civil engineering, geology, economics, or demography. These are skills that are available to the Commissioner from staff, consultants, and the applicant. The Commissioner's job is to weigh the professional input given in staff reports, environmental impact reports, and consultant reports.
A Commissioner is much like a judge, who is trained to render a legal decision based on the testimony of experts and others who appear as witnesses in a trial.

Suggested qualifications for a Planning Commissioner include:

1. A willingness and ability to research and report on issues, programs and policies related to development issues.

2. A willingness to attend night meetings on a regular basis. Three (3) unexcused absences in one year are generally grounds for dismissal from the Commission.

3. A willingness to assist in implementing projects as decided upon by the City Council.

4. The ability to sustain harmonious working relationships with Commission members, the City Council, residents and the public.

5. A willingness to attend extracurricular meeting and training seminars related to regional to regional planning issues.

6. A willingness to make decisions based upon planning principles and what is best for the community as a whole.

Annual Statement of Economic Interests: Government Code Section 87200 of the Political Reform Act requires Planning Commissioners to file annual statements of economic interests that disclose reportable financial interests. These statements are intended to alert the public and officials about financial interests that may require disqualification from governmental decisions because of a conflict of interest. These statements are public documents.

PUBLIC SAFETY COMMISSION

The Public Safety Commission shall be composed of five members City Council and two members of the San Dimas Sheriff's Station Community Advisory Board. They shall be registered voters of the City, serve without compensation and be appointed upon the basis of three affirmative votes of members of the City Council (does not include CAB members). Service on this Commission is voluntary.

Each member will be appointed to a two-year term with a limit of two terms. Commissioners cannot concurrently serve on two or more commissions. After term expiration, Commissioners must wait one year before being eligible for service on the same Commission

Duties:

1. To learn more of the City's public safety services by attending informative commission meetings.

2. To advise the City Council on matters relating to law enforcement including but not limited to, policing, crime prevention, fire suppression, emergency medical response, fire prevention and emergency services.

3. To represent the views of the citizenry relating to public safety plans, programs, and future needs.

4. To consult with professional staff in the development of public safety programs.

5. To enlist community interest in, and support for, the City's public safety programs.

6. To work with citizens, elected and appointed officials, and professional staff to support the work of public safety personnel.

Desirable Qualifications:

1. Willingness to attend informative commission meetings to learn about public safety services as they affect the welfare of the people of San Dimas.

2. Ability to interpret public safety services to the community, and to interpret the community to professional public safety personnel.

3. Ability to develop and maintain harmonious working relationships with other committee members, City Council, Sheriff's Department, Fire Department the public, the school district, service organizations and other community groups.

4. Willingness to attend committee meetings. Three unexcused absences in one year may result in dismissal from the Commission.

SENIOR CITIZENS COMMISSION

The Senior Citizens Commission shall consist of five members who shall be registered of the City, serve without compensation, and be appointed upon the basis of three affirmative votes of members of the City Council based on nominations from members of the City Council. At least five (5) of the Commissioners shall be over 55 years of age.

Each Commissioner will be appointed to a two-year term with a limit of two terms. Commissioners cannot concurrently serve on two or more commissions. After serving two consecutive terms, Commissioners must wait one year before being eligible to reapply for service on the same commission.

Duties:

The powers and duties of the Commission are as follows:

1. To act in an advisory capacity to the City Council in all matters pertaining to older Americans and their needs, including, but not limited to health and nutrition, transportation, housing, employment and recreational programs.

2. To be empowered to assemble information on the problems and their solutions pertaining for older Americans through all means available, including investigation of the availability of grants for senior citizen needs.

3. To be empowered on its own initiative to make recommendations to the City Council on matters within its purview.

4. To act to facilitate coordination between existing and proposed programs for senior citizens provided by various levels of government.

Desirable Qualifications:

Suggested qualifications for Senior Citizens Commissioners include, but are not limited to, the following knowledge and abilities:

1. Some knowledge, experience and empathy of the concerns and problems of the older individual;

2. The ability to enthusiastically research and report on issues, programs, and policies relating to senior citizens;

3. The ability to enthusiastically assist in implementing projects as decided upon by the Senior Citizen Commission and/or City Council.

4. Ability to develop and maintain harmonious working relationships with Commission members, the City Council, residents and the public.

5. The time and level of commitment to be present and enthusiastically support all Senior Citizens Commission activities.

6. The time to enthusiastically attend Commission meeting. Absence from three (3) consecutive meetings in one year may result in dismissal from the Commission.

Rosenberg's Rules of Order

REVISED 2011

Simple Rules of Parliamentary Procedure for the 21st Century

By Judge Dave Rosenberg

MISSION and CORE BELIEFS

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

VISION

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

About the League of California Cities

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

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

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a five-member committee to plan and put on our annual fundraiser."
The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion that is before the body and seeks to change it in some way.
The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

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

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

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

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed *first* on the *last* motion that is made. For example, assume the first motion is a basic "motion to have a five-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a five-member committee to plan and put on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:
First, the chair would deal with the *third* (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion *passed*, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions.
Second, if the substitute motion *failed*, the chair would then deal with the second (now the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be five or 10 members). If the motion to amend *passed*, the chair would then move to consider the main motion (the first motion) as *amended*. If the motion to amend *failed,* the chair would then move to consider the main motion (the first motion) in its original format, not amended.
Third, the chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (five-member committee), or if *amended*, would be in its amended format (10-member committee). The question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate
The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the chair must immediately call for a vote of the body without debate on the motion):
Motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.
Motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.
Motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.
Motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold." The motion can contain a specific time in which the item can come back to the body. "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.
Motion to limit debate. The most common form of this motion is to say, "I move the previous question" or "I move the question" or "I call the question" or

sometimes someone simply shouts out “question.” As a practical matter, when a member calls out one of these phrases, the chair can expedite matters by treating it as a “request” rather than as a formal motion. The chair can simply inquire of the body, “any further discussion?” If no one wishes to have further discussion, then the chair can go right to the pending motion that is on the floor. However, if even one person wishes to discuss the pending motion further, then at that point, the chair should treat the call for the “question” as a formal motion, and proceed to it. When a member of the body makes such a motion (“I move the previous question”), the member is really saying: “I’ve had enough debate. Let’s get on with the vote.” When such a motion is made, the chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a two-thirds vote of the body.

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

Majority and Super Majority Votes

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

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

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

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

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

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

Counting Votes

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

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

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

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

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

In California, for example, for an action of a board of supervisors to be valid and binding, the action must be approved by a majority of the board. (California Government Code Section 25005.) Typically, this means three of the five members of the board must vote affirmatively in favor of the action. A vote of 2-1 would not be sufficient. A vote of 3-0 with two abstentions would be sufficient. In general law cities in California, as another example, resolutions or orders for the payment of money and all ordinances require a recorded vote of the total members of the city council. (California Government Code Section 36936.) Cities with charters may prescribe their own vote requirements. Local elected officials are always well-advised to consult with their local agency counsel on how state law may affect the vote count.

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

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

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

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

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

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

Now, exactly how does a member cast an "abstention" vote? Any time a member votes "abstain" or says, "I abstain," that is an abstention. However, if a member votes "present" that is also treated as an abstention (the member is essentially saying, "Count me for purposes of a quorum, but my

vote on the issue is abstain.") In fact, any manifestation of intention not to vote either "yes" or "no" on the pending motion may be treated by the chair as an abstention. If written ballots are cast, a blank or unreadable ballot is counted as an abstention as well.

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

The Motion to Reconsider

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

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

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

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

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

Courtesy and Decorum

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

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

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

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

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

Order. The proper interruption would be, "point of

order." Again, the chair would ask the interrupter to "state your point." Appropriate **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 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.

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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A GUIDE TO THE RALPH M. BROWN ACT

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Chapter 1

IT IS THE PEOPLE'S BUSINESS

The right of access

Broad coverage

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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.

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

The 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.

B Broad coverage

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

Similarly, meetings subject to the Brown Act are not limited to face-to-face gatherings. They also include any communication medium or device through which a majority of a legislative body discusses, deliberates or takes action on an item of business outside of a noticed meeting. They include meetings held from remote locations by teleconference.

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

Narrow exemptions

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

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

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

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

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

Public participation in meetings

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

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

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

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

Controversy

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

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

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

Beyond the law — good business practices

Violations of the Brown Act can lead to invalidation of an agency's action, payment of a challenger's attorney fees, public embarrassment, even criminal prosecution. But the Brown Act is a floor, not a ceiling for conduct of public officials. This guide is focused not only on the Brown Act as a minimum standard, but also on meeting practices or activities that, legal or not, are likely to create controversy. Problems may crop up, for example, when agenda descriptions

are too brief or vague, when an informal get together takes on the appearance of a meeting, when an agency conducts too much of its business in closed session or discusses matters in closed session that are beyond the authorized scope, or when controversial issues arise that are not on the agenda.

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

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

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

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

Achieving balance

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

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

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

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

Historical note

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

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

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

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

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

ENDNOTES:

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

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

Chapter 2

LEGISLATIVE BODIES

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

What is <u>not</u> 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" and certain of its subsidiary bodies; "or any other local body created by state or federal statute."[2] This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A "local agency" is any city, county, city and county, school district, municipal corporation, successor agency to a redevelopment agency, district, political subdivision or other local public agency.[3] A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.[4] The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.[5] Entities created pursuant to joint powers agreements are also local agencies within the meaning of the Brown Act.[6]

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

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

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

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

- Appointed bodies — whether permanent or temporary, decision-making or advisory —

including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue-ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate; and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.[8]

Standing committees of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction; or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.[9] Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee "shall not exercise continuing subject matter jurisdiction" or the fact that the committee does not have a fixed meeting schedule is not determinative.[10] "Formal action" by a legislative body includes authorization given to the agency's executive officer to appoint an advisory committee pursuant to agency-adopted policy.[11]

The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity; or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity's governing board.[12] These include some nonprofit corporations created by local agencies.[13] If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.[14] When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.[15]

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

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

Q: If a community college district board creates an auxiliary organization to

operate a campus bookstore or cafeteria, is the board of the organization a legislative body?

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

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

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

 A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.[17] Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.[18]

 Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.[19]

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

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

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

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

 Individual decision makers who are not elected or appointed members of a legislative

body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.[20]

- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.[21]
- County central committees of political parties are also not Brown Act bodies.[22]

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

ENDNOTES:

1 Taxpayers for Livable Communities v. City of Malibu (2005) 126 Cal.App.4th 1123, 1127
2 California Government Code section 54952(a) and (b)
3 California Government Code section 54951; Health and Safety Code section 34173(g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
4 Torres v. Board of Commissioners of Housing Authority of Tulare County (1979) 89 Cal.App.3d 545, 549550
5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
6 McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force (2005) 134 Cal. App.4th 354, 362
7 California Government Code section 54952.1
8 Joiner v. City of Sebastopol (1981) 125 Cal.App.3d 799, 804-805
9 California Government Code section 54952(b)
10 79 Ops.Cal.Atty.Gen. 69 (1996)
11 Frazer v. Dixon Unified School District (1993) 18 Cal.App.4th 781, 793
12 California Government Code section 54952(c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
13 California Government Code section 54952(c)(1)(A); International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc. (1999) 69 Cal.App.4th 287, 300; Epstein v. Hollywood Entertainment Dist. II Business Improvement District (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002)
14 International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal (1999) 69 Cal. App.4th 287, 300 fn. 5
15 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7
16 California Government Code section 54952(d)
17 California Government Code section 54952(b); see also Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors (1993) 6 Cal.4th 821, 832.
18 Taxpayers for Livable Communities v. City of Malibu (2005) 126 Cal.App.4th 1123, 1129 19 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973) 20 Wilson v. San Francisco Municipal Railway (1973) 29 Cal.App.3d 870, 878-879 21 Golightly v. Molina (2014) 229 Cal.App.4th 1501, 1513 22 59 Ops.Cal.Atty.Gen. 162, 164 (1976)

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Chapter 3

MEETINGS

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CHAPTER 3
MEETINGS

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

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

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

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

Individual Contacts

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

local agency staff, or a colleague.

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

Conferences

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

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

Community Meetings

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

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition."I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

The Brown Act permits a majority of a legislative body to attend and speak at an open and publicized meeting conducted by another organization. The Brown Act may nevertheless be violated if a majority discusses, deliberates, or takes action on an item during the meeting of the other organization. There is a fine line between what is permitted and what is not; hence, members should exercise caution when participating in these types of events.

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

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

Other Legislative Bodies

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

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

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

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

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

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

Standing Committees

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a

standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).[9]

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

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

Social or Ceremonial Events

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

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

Grand Jury Testimony

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

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

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

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

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

Serial meetings

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

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

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

The Brown Act has been violated, however, if several one-on-one meetings or conferences leads to a

discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.[15]

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

The phone call was from a lobbyist. "Say, I need your vote for that project in the south area. How about it?"

"Well, I don't know," replied Board Member Aletto. "That's kind of a sticky proposition. You sure you need my vote?"

"Well, I've got Bradley and Cohen lined up and another vote leaning. With you I'd be over the top."

Moments later, the phone rings again. "Hey, I've been hearing some rumbles on that south area project," said the newspaper reporter. "I'm counting noses. How are you voting on it?"

Neither the lobbyist nor the reporter has violated the Brown Act, but they are facilitating a violation. The board member may have violated the Brown Act by hearing about the positions of other board members and indeed coaxing the lobbyist to reveal the other board members' positions by asking "You sure you need my vote?" The prudent course is to avoid such leading conversations and to caution lobbyists, staff, and news media against revealing such positions of others.

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

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

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

The planning director should not disclose Jones' prospective vote, and Kim should not

disclose the prospective votes of two of her colleagues. Under these facts, there likely has been a serial meeting in violation of the Brown Act.

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

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

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

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

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.

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

Informal gatherings

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

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

A gathering like this would not violate the Brown Act if board members scrupulously

avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive's presence in no way lessens the potential for a violation of the Brown Act.

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

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

Technological conferencing

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

"Teleconference" is defined as "a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both."[21] In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:[22]

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

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

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

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

Location of meetings

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

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

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

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

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

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

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

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

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

Endnotes:

1 California Government Code section 54952.2(a)
2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
3 California Government Code section 54954(a)
4 California Government Code section 54956
5 California Government Code section 54956.5
6 California Government Code section 54955
7 California Government Code section 54952.2(c)
8 California Government Code section 54952.2(c)(4)
9 California Government Code section 54952.2(c)(6)
10 California Government Code section 54953.1
11 *"The Brown Act,"* California Attorney General (2003), p. 10
12 California Government Code section 54952.2(b)(1)
13 *Stockton Newspaper Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95
14 California Government Code section 54952.2(b)(2)
15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518
16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
17 California Government Code section 54957.5(a)
18 California Government Code section 54952.2(b)(2)

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

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

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

22 California Government Code section 54953

23 California Government Code section 54954(b)

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

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

26 California Government Code section 54954(c)

27 California Government Code section 54954(d) 28 California Government Code section 54954(e)

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Chapter 4

AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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

Notice of compensation for simultaneous or serial meetings

Educational agency meetings

Notice requirements for tax or assessment meetings and hearings

Non-agenda items

Responding to the public

The right to attend and observe meetings

Records and recordings

The public's place on the agenda

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

Agendas for regular meetings

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

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

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

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

a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public awareness, among other factors.[8] The City Attorneys' Department has taken the position that obvious website technical difficulties do not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.

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

Q. The agenda for a regular meeting contains the following items of business: •ƒ Consideration of a report regarding traffic on Eighth Street; and

•ƒ 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.

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

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

Notice requirements for special meetings

There is no express agenda requirement for special meetings, but the notice of the special meeting effectively serves as the agenda and limits the business that may be transacted or discussed.

Written notice must be sent to each member of the legislative body (unless waived in writing by that member) and to each local newspaper of general circulation, and radio or television station that has requested such notice in writing. This notice must be delivered by personal delivery or any other means that ensures receipt, at least 24 hours before the time of the meeting.

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

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

Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.[13] If no time is stated, the meeting is continued to the hour for regular

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

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

Notice requirements for emergency meetings

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

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

Notice of compensation for simultaneous or serial meetings

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

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

Educational agency meetings

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

Notice requirements for tax or assessment meetings and hearings

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

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

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

Non-agenda items

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

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

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

"I'd like a two-thirds vote of the board, so we can go ahead and authorize commencement of phase two of the East Area Project," said Chair Lopez.

"It's not on the agenda. But we learned two days ago that we finished phase one ahead of schedule — believe it or not — and I'd like to keep it that way. Do I hear a motion?"

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

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

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

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

Responding to the public

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

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

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

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

It is clear from this dialogue that the Elm Street project was not on the council's agenda, but was raised during the public comment period for items not on the agenda. Council Member A properly asked staff to respond; the city manager should

have given at most a brief response. If a lengthy report from the public works director was warranted, the city manager should have stated that it would be placed on the agenda for the next meeting. Otherwise, both the long report and the likely discussion afterward will improperly embroil the council in a matter that is not listed on the agenda.

The right to attend and observe meetings

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

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

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

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.[28]
Action by secret ballot, whether preliminary or final, is flatly prohibited.[29]

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

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

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

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

Records and recordings

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

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

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

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

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

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

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

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

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

persistently disrupt the proceedings.[40] Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.[41]

The public's place on the agenda

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

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

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

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

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

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

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

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

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

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

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

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

Endnotes:

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

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

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

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

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

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

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

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

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

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

11 California Government Code section 54954.1

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

13 California Government Code section 54955

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

15 California Government Code section 54955.1

16 California Government Code section 54956.5

17 California Government Code section 54952.3

18 Education Code sections 35144, 35145 and 72129

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

20 California Education Code section 35145.5

21 California Government Code section 54954.6

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

23 California Government Code section 54954.2(b)

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

25 California Government Code section 54953.3

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

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

28 California Government Code section 54953(b)

29 California Government Code section 54953(c)

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

31 California Government Code section 54957.9.

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

33 California Government Code section 54957.9

34 California Government Code section 54957.5

35 California Government Code section 54957.5(d)

36 California Government Code section 54957.5(b)

37 California Government Code section 54957.5(c)

38 California Government Code section 54953.5(b)

39 California Government Code section 54957.5(d)

40 California Government Code section 54953.5(a)

41 California Government Code section 54953.6

42 California Government Code section 54954.3(a)

43 California Government Code section 54954.3(c)

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

45 California Government Code section 54954.3(a)

46 California Government Code section 54954.3(a)

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

Chapter 5
CLOSED SESSIONS

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

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

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

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

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

The Brown Act supplies a series of fill in the blank sample agenda descriptions for various types of authorized closed sessions, which provide a "safe harbor" from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional law enforcement cases, hospital boards of directors, medical quality assurance committees, joint powers agencies, and audits by the California State Auditor's Office.[7]

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

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

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

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

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

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

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

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

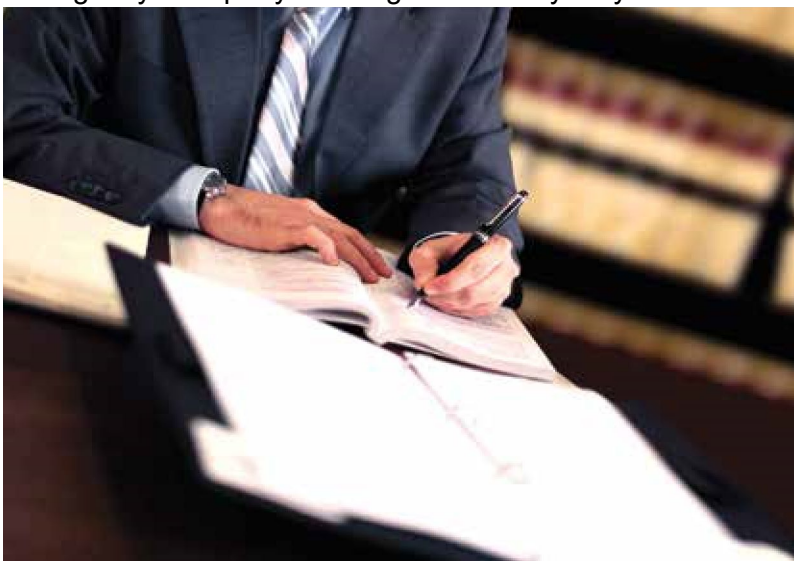
Before holding a closed session under the pending litigation exception, the legislative body must publicly state the basis for the closed session by identifying one of the following three types of matters: existing litigation, anticipated exposure to litigation, or anticipated initiation of litigation.[18]

Existing litigation

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

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

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



Anticipated exposure to litigation against the local agency

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

Anticipated initiation of litigation by the local agency

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

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

Real estate negotiations

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

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

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

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

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement

final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person, as soon as the agency is informed of it.[26]

> **"Our population is exploding, and we have to think about new school sites," said Board Member Jefferson.**
>
> **"Not only that," interjected Board Member Tanaka, "we need to get rid of a couple of our older facilities."**
>
> **"Well, obviously the place to do that is in a closed session," said Board Member O'Reilly. "Otherwise we're going to set off land speculation. And if we even mention closing a school, parents are going to be in an uproar."**
>
> *A closed session to discuss potential sites is not authorized by the Brown Act. The exception is limited to meeting with its negotiator over specific sites — which must be identified at an open and public meeting.*

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

Public employment

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

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

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

Q. Must 24 hours' notice be given to an employee whose negative performance evaluation is to be

considered by the legislative body in closed session?

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

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

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.[37] Action on individuals who are not "employees" must also be public — including discussing and voting on appointees to committees, or debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.
The personnel exception specifically prohibits discussion or action on proposed compensation in closed session, except for a disciplinary reduction in pay. Among other things, that means there can be no personnel closed sessions on a salary change (other than a disciplinary reduction) between any unrepresented individual and the legislative body. However, a legislative body may address the compensation of an unrepresented individual, such as a city manager, in a closed session as part of a labor negotiation (discussed later in this chapter), yet another example of the importance of using correct agenda descriptions.

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

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

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

Labor negotiations

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

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

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

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

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

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

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

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

Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization;
2. A meeting of a mediator with either side;
3. A hearing or meeting held by a fact finder or arbitrator; and

4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.[44]

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

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

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

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

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

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

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

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

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

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

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

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

Other legislative bases for closed session
Since any closed session meeting of a legislative body must be authorized by the Legislature, it is important to carefully review the Brown Act to determine if there is a provision that authorizes a closed session for a particular subject matter. There are some less frequently encountered topics that are

authorized to be discussed by a legislative body in closed session under the Brown Act, including: a response to a confidential final draft audit report from the Bureau of State Audits,[57] consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,[58] hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medi-Cal services,[59] discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,[60] and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.[61]

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

Who may attend closed sessions

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

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

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

The confidentiality of closed session discussions

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

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

and referral of a member of the legislative body to the grand jury.[69]

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

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

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

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

ENDNOTES:

1 California Government Code section 54962
2 California Constitution, Art. 1, section 3
3 61 Ops.Cal.Atty.Gen. 220 (1978); but see California Government Code section 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations, and other related matters).
4 California Government Code section 54957.1
5 California Government Code section 54954.5
6 California Government Code section 54954.2
7 California Government Code section 54954.5
8 California Government Code sections 54956.9 and 54957.7
9 California Government Code section 54957.1(a)
10 California Government Code section 54957.1(b)

11 California Government Code section 54957.2

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

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

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

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

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

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

18 California Government Code section 54956.9(g)

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

20 Government Code section 54956.9(e)

21 California Government Code section 54957.1

22 California Government Code section 54956.8

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

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

25 California Government Code sections 54956.8 and 54954.5(b)

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

27 California Government Code section 54957(b)

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

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

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

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

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

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

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

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

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

37 California Government Code section 54957

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

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

40 California Government Code section 54957.6

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

42 California Government Code section 54957.6; and 51 Ops.Cal.Atty.Gen. 201 (1968)
43 California Government Code section 54957.1(a)(6) 4
4 California Government Code section 3549.1
45 California Government Code section 3540
46 California Government Code section 3547
47 California Education Code section 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).

48 California Education Code section 72122

49 California Education Code section 60617

50 California Government Code section 54956.96

51 California Government Code section 54956.7

52 California Government Code section 54957

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

54 California Government Code section 54957.8

55 California Government Code section 54962

56 California Health and Safety Code section 32106

57 California Government Code section 54956.75

58 California Government Code section 54956.81

59 California Government Code section 54956.86

60 California Government Code section 54956.87

61 California Government Code section 54956.95

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

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

64 Government Code section 54963

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

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

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

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

69 California Government Code section 54963

70 California Government Code section 54963

71 California Government Code section 54957.1

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Chapter 6
REMEDIES

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

Invalidation

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

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

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

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

Applicability to Past Actions

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

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

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

Civil action to prevent future violations

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

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

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

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

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

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

Costs and attorney's fees

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

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

Criminal complaints

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

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

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

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

The second component of a criminal violation is that action is taken with the intent of a member "to deprive the public of information to which the member knows or has reason to know the public is entitled" by the Brown Act.[24]
As with other misdemeanors, the filing of a complaint is up to the district attorney. Although criminal prosecutions of the Brown Act are uncommon, district attorneys in some counties aggressively monitor public agencies' adherence to the requirements of the law.

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

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

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

ENDNOTES:

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

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

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

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

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

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

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

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

9 Government Code Section 54960.2(b)

10 Government Code Section 54960.2(a)(4)

11 Government Code Section 54960.2(c)(2)

12 Government Code Section 54960.2(c)(1)

13 Government Code Section 54960.2(c)(3)

14 Government Code Section 54960.2(d)

15 Government Code Section 54960.2(e)

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

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

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

19 California Government Code section 54960.5

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

21 California Government Code section 54959

22 California Government Code section 54952.6
23 61 Ops.Cal.Atty.Gen.283 (1978)

24 California Government Code section 54959

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

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

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RESOLUTION 2021- 24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, ADOPTING THE CITY'S COMMISSION HANDBOOK

WHEREAS, The City of San Dimas maintains a Commission Handbook governing the policies, procedures and practices of the City's Boards, Commissions, and Committees; and

WHEREAS, the Commission Handbook has been recently reviewed and revised as a whole and is intended to supersede previous Handbooks, policies and procedures applying to Boards, Commissions, and Committees; and

WHEREAS, the City Council met during several meetings to consider and revise the Commission Handbook.

NOW, THEREFORE, BE IT FURTHER RESOLVED the City Council of the City of San Dimas does hereby resolve that:

Section 1. A Commission Handbook (Exhibit A) is hereby approved and adopted as amended.

Section 2. Any previous Commission Handbook is rescinding, and this Commission Handbook will supersede other resolutions, policies, or practices which conflict with this Commission Handbook.

PASSED, APPROVED AND ADOPTED this 27th day of April, 2021.

Emmett G. Badar, Mayor

ATTEST:

Debra Black, City Clerk

Resolution 2021-24
Boards Commissions and Committee's Handbook April 27th, 2021

I, Debra Black, City Clerk, hereby certify that Resolution 2021-24 was adopted by the City Council of San Dimas at its regular meeting of April 27, 2021 by the following vote:

AYES:	Badar, Bertone, Ebiner, Vienna, Weber
NOES:	None
ABSENT:	None
ABSTAIN:	None

Debra Black, City Clerk

RESOLUTION 2023-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, AMENDING THE CITY'S BOARDS, COMMISSION AND COMMITTEES HANDBOOK

WHEREAS, The City of San Dimas maintains a Commission Handbook governing the policies, procedures and practices of the City's Boards, Commissions, and Committees; and

WHEREAS, the Commission Handbook has been recently reviewed and revised as a whole and is intended to supersede previous Handbooks, policies and procedures applying to Boards, Commissions, and Committees; and

WHEREAS, the City Council last met on February 4, 2023 and March 14, 2023 to consider and revise the Commission Handbook.

NOW, THEREFORE, BE IT FURTHER RESOLVED the City Council of the City of San Dimas does hereby resolve that:
SECTION 1. The Commission Handbook (Exhibit A) is hereby approved and adopted as amended.

SECTION 2. Any previous Commission Handbook is rescinded, and this Commission Handbook will supersede other resolutions, policies, or practices which conflict with this Commission Handbook.

PASSED, APPROVED AND ADOPTED this 11th day of July, 2023.

Emmett G. Badar, Mayor

ATTEST:

Debra Black, City Clerk

Resolution 2023-14
Boards Commissions and Committee's Handbook
July 11, 2023

I, Debra Black, City Clerk, hereby certify that Resolution 2023-14 was adopted by the City Council of San Dimas at its regular meeting of July 11, 2023, by the following vote:

AYES:	Badar, Nakano, Vienna, Weber
NOES:	Ebiner
ABSENT:	None
ABSTAIN:	None

Debra Black, City Clerk

RESOLUTION 2024-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN DIMAS, COUNTY OF LOS ANGELES, AMENDING THE CITY'S BOARDS, COMMISSIONS AND COMMITTEES HANDBOOK

WHEREAS, The City of San Dimas maintains a Commission Handbook governing the policies, procedures and practices of the City's Boards, Commissions, and Committees; and

WHEREAS, the Commission Handbook has been recently reviewed and Section IV has been revised by adding language for a Zero Term Policy and implementing commission appointments at 6 months from the date of certification and swearing in of a newly elected Councilmember on the 2nd Tuesday of that month, except for special elections and special circumstances. This is intended to supersede previous Handbooks, policies and procedures applying to Boards, Commissions, and Committees; and

WHEREAS, the City Council last met on April 26th , 2024 to consider and revise the Commission Handbook.

NOW, THEREFORE, BE IT FURTHER RESOLVED the City Council of the City of San Dimas does hereby resolve that:

Section 1. A list of the revisions (Exhibit A) is hereby approved and adopted as amended.

Section 2. Any previous Commission Handbook is rescinded, and this Commission Handbook will supersede other resolutions, policies, or practices which conflict with this Commission Handbook.

PASSED, APPROVED AND ADOPTED this 14th day of May, 2024.

Emmett G. Badar, Mayor

ATTEST:

Debra Black, City Clerk

Resolution 2024-25
Boards Commissions and Committee's Handbook
May 14th, 2024

I, Debra Black, City Clerk, hereby certify that Resolution 2024-25 was adopted by the City Council of San Dimas at its regular meeting of May 14th , 2024, by the following vote:

AYES:	Badar, Bratakos, Nakano, Vienna, Weber
NOES:	None
ABSENT:	None
ABSTAIN:	None

Debra Black, City Clerk

Exhibit A

2024 Board Commission and Committees Handbook Revisions

Section IV

A. Effective upon approval of this Handbook and Expiring with the 2026 Election Cycle a Zero Term Policy will be in place. Additionally, appointments for new Commissioners shall be six months from the date of certification and swearing in of the newly elected Councilmember on the 2nd Tuesday of that month, except for special elections and special circumstances.

F. For administrative purposes tracking will be done by term and not the date of appointment

Revisions

MARCH 19, 2014

- **clearer outline of the Commissions and Committees purposes**
- **expansion on Ethics Training, Brown Act, Political Reform Act**
- **meeting frequencies**

October 2017 Reprint

MAY 2021 REVISIONS

- **Broaden input and consideration of Commission, Committee, and Board perspectives**
- **DPRB –**
    i. **revised number of public members**
    ii. **replaced Assistant City Manager to City Manager**
- **Parks and Recreation – clarification for Youth Commissioner**
- **Planning**
    i. **Update meeting day**
    ii. **Staff Liaison change**
- **Public Safety**
    i. **Composition change from 9 members to five with attrition**
- **Appointment of Employees' Relative**
    i. **Add brothers/sisters' spouse**
- **Appointment of Relatives of City Council or City Manager**
    i. **Add City Manager**
    ii. **Add brother/sister spouse**
    iii. **Add cousin, uncle, aunt, nephew, niece**
- **Resignation – clarify notification staff**
- **Attendance – language added to ratified Council's authority to remove**
- **Benefits – added amount**
- **Ethics and other Training – added Rosenberg and Sexual Harassment**
- **Special Meetings – clarification of authority to call**
- **Agenda – clarification of process to add items**
- **Interaction with Staff – add language defining limits for staff support**
- **Interaction with City Council – identify members authorized to speak on behalf of Commission**

- **Interaction with the Public – language added outlining commissioner's approach to representation, positions and views**
- **Approvals and Modifications – added section**

JULY 2023 REVISIONS

Equestrian, Parks and Recreation, Public Safety, Senior Commission, Planning Commissions composition changed to five

Section II B - Add City Manager is an ex officio member of all Commissions, Committee or Boards created by the City Council or established by state law, with the right to participate in all deliberations or actions by such Commissions, Committees or Boards
Section II B - changed staff liaison from Assistant City Manager to Director of Parks and Recreation
Section II B - to five Commissioners
Section II B - deleted Youth Commissioner language
Section II E - added designee
Section II F - update to five members

Section III - Add Each Commission shall have a nonvoting position for any interested student applicant who is a resident in the City of San Dimas starting at age 16 but under the age of 21. They will serve one-year term increments from the date of appointment and will be selected by City Staff in collaboration with the local schools.
Section III B - Change three full to two full consecutive terms.
Section III B - Change Assistant City Manager to Director of Parks and Recreation.
Section III C - third paragraph first sentence - Change seven to five Commissioners; replace six with all, who with whom, three to two full terms.
Section III C - third paragraph – delete second and third sentence
Section III E - third paragraph second sentence – change three to two, add including appointees from the Civilian Advisory Board and designee.
Section III F - third paragraph – change nine to five members and three to Two full consecutive terms.

Section IV A - changed to include nominations from each Councilmember
Section IV A - added voter registration requirement

Section IV B - changed terms of office to two full terms for all Commissions, Committees or Boards
Section IV B - added term language for DPRB
Section IV D - Appointment of Employee's Relative added parent

Section IV G - updated title to Resignation and Removal
Section IV G - added vote requirement for removal
Section IV H - changed unexcused absences to two
Section IV H - added attendance report requirement
Section IV J - added must be included in budget and pre-approved
Section IV K - added AB1234 and AB1661 language
Section IV L - updated to Rosenberg's Rules

Section V K - deleted requirement to have attended meeting to approve minutes
Section V K - added except for clerical errors

Section VI B - deleted Councilmember Liaison
Section VI B - added requirement for Chairs to present an annual report to City Council

Section VII B - added language public not required to identify themselves

MAY 2024 REVISIONS

Section IV A - Effective upon approval of this Handbook and Expiring with the 2026 Election Cycle, a Zero Term Policy will be in place. Additionally, appointments for new Commissioners shall be six months from the date of certification and swearing in of the newly elected Councilmember on the 2nd Tuesday of that month, except for special elections and special circumstances.

Section IV F - For administrative purposes tracking will be done by term and not the date of appointment