

# **CITY OF SANTA ANA**



## **BOARDS, COMMISSIONS AND COMMITTEES**

### **HANDBOOK & RESOURCE GUIDE**



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## **SECTION 1: GENERAL INFORMATION**

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## **INTRODUCTION**

The material in this handbook is written for individuals interested in applying for an appointed position in the City of Santa Ana. This handbook is divided into five sections -- General Information; Meetings; Filings, Requirements and Disqualifications; Directory; and Appendices. It covers key information about nominations, appointments, qualifications, duties, compensation, meeting schedules, and policies among other pertinent details.

Most of the information comes from the Santa Ana City Charter, Santa Ana Municipal Code, and the State of California Government Code. Copies of these documents are available for review in the Santa Ana Public Library and the Orange County Law Library, which are both located in the Santa Ana Civic Center Plaza.

Copies of the Santa Ana Municipal Code can be purchased from Municipal Code Corporation by calling 1-800-262-2633 or by visiting their web site at <http://www.municode.com>.

## **PURPOSE OF BOARDS, COMMISSIONS AND COMMITTEES**

Citizen participation in local government is a time-honored tradition in Santa Ana. In 1904, the Board of Trustees, as the City Council was called at the time, created its first appointive body--a Board of Fire Commissioners--to help administer the City's fire protection program.

By the mid-1920's, about four decades after incorporation, Santa Ana's vision of the future became a matter of concern. The Board of Trustees then established a City Planning Commission, which was entrusted with "recommending to the proper officers of the municipality, plans for the regulation of the future growth, development, and beautification in respect to its public and private buildings, streets, parks, grounds, and vacant lots."

Through the years, the Board of Trustees continued to encourage citizen participation and sought advice from citizen committees on many diverse issues from forestry to steam railroad track removal.

In 1952, the current City Charter was adopted by the electorate. The Charter identified three appointive boards, including the Personnel Board, Planning Commission, and Board of Recreation and Parks, that were established and empowered with specified powers and duties contained within the City Charter.

The Charter also authorized the City Council to create other appointive bodies as needed to render counsel on municipal matters. The City Council has used this Charter authority to respond to new challenges brought about by the changing needs of the City.

In 1991, the Transportation Advisory Committee, established some twenty years earlier, was reorganized to take on the additional duty of monitoring the City's environmental concerns and was renamed the Environmental and Transportation Advisory Committee. In 1998, a Historic Resources Commission was established to help preserve the City's rich cultural and architectural heritage. In 1999, the City Council established a Youth



Commission, comprised of members from the age of eleven to twenty, to review and recommend programs that stimulate a prosperous environment for the youth of Santa Ana.

Boards, Commissions and Committees serve as conduits for conveying to Councilmembers a sense of the community's sentiments on existing and prospective legislation. Members are uniquely positioned to provide elected officials and City staff with invaluable insight and information for fact-based decision making. As such, members perform an invaluable public service by broadening the forum for community input and enhancing the processes of a representative democracy.

The City Council appreciates your willingness to work in this capacity and hopes your experience will be stimulating, enjoyable and rewarding.

## **OPPORTUNITIES FOR SERVICE**

Interested individuals may apply for appointment to any of the following City boards and commissions:

1. Arts and Culture Commission
2. Community Redevelopment and Housing Commission
3. Environmental and Transportation Advisory Committee
4. Historic Resources Commission
5. Personnel Board
6. Planning Commission
7. Recreation and Parks (Board of)
8. Workforce Development Board\*\*
9. Youth Commission\*\*\*

## **QUALIFICATIONS FOR APPOINTMENT**

Qualifications and requirements for members are set by law -- the Charter, City ordinances and resolutions, and other enabling legislation. Provided below is a summary of the statutes governing membership.

### ***Residency Requirement and Definition***

All Board, Commission and Committee members must reside in the City of Santa Ana, with the exception of the Workforce Development Board members. The Workforce Development Board has different requirements and appointment process that will be discussed separately in this handbook. Board members represent the interests of the entire City, and they may reside anywhere within the city limits.

### ***Voter Registration\*\*\****

To qualify for appointment, one must be a registered voter in Santa Ana. Student representatives and Youth Commission members, who are not yet of voting age, are exempt from this provision (until they turn 18 years of age).

### ***Charter Limitations***

Charter § 901.1 specifies that if any member of an appointive board, commission or committee becomes the treasurer of a campaign committee which receives contributions for any candidate for mayor or Councilmember, his or her office shall be declared vacant by the City Council.

At the November 7, 2006 general municipal election, the voters approved a Charter amendment specifying that, in addition to the above requirement, no person who serves as the treasurer of a campaign committee which receives contributions for any candidate for mayor or Councilmember shall be eligible for appointment to any appointive board, commission or committee.

Charter § 911 further prohibits persons who are candidates for public office, or employed in the City of Santa Ana government, or are officers of partisan organizations, from serving on the Personnel Board. Members of the Personnel Board are not eligible for appointment to any salaried office or employment in the service of the city for a period of one (1) year after leaving the Board for any reason.

Further, Government Code § 1126 prohibits any public agency employee from serving on a board, commission or committee that will directly or indirectly conflict with his/her official duties.

### **APPOINTMENT PROCESS**

Board, Commission and Committee members are appointed, not elected. With the exception of the members of the Personnel Board, who can only be removed for cause, all members appointed by the City Council serve at the pleasure of the City Council. As a matter of policy and past practice, appointed members shall serve on only one board, commission or committee at any given time, with the exception of ex-officio representatives from Community Redevelopment and Housing Commission and the Planning Commission who also sits on the Historic Resources Commission.

The Clerk of the Council oversees the appointment process and maintains a roster of the citizens who have been appointed to the various City boards.

Also, as of 2006, at least fifty-percent (50%) of those persons nominated by a Councilmember must reside in the ward represented by such Councilmember. A Councilmember may request that this rule be waived for any one appointment if the requesting member is unable to find a qualified and acceptable ward resident to nominate. Two-thirds of the City Council (five votes) must approve this request.

## ***Application for Service***

Persons interested in serving on a City board, commission or committee should file an "Application for Service to the City" along with a Santa Ana Code of Ethics certification, with the Clerk of the Council. Applications are accepted on a continuous basis. Application forms can be obtained during regular business hours, 8:00 a.m. to 5:00 p.m. Monday - Thursday and alternate Fridays at: Santa Ana City Hall, Clerk of the Council Office, Room 809, 8<sup>th</sup> Floor, 20 Civic Center Plaza. The telephone number is (714) 647-6520. Applications are also available on the City's website at [www.santa-ana.org/coc/documents/BCAPPLICATION.pdf](http://www.santa-ana.org/coc/documents/BCAPPLICATION.pdf).

Applications received are verified for voter registration in the City of Santa Ana. The applications are then circulated to the Councilmembers for their review and remain on file in the Clerk's Office for two years. As part of the application process for membership on any Board, Commission or Committee, prospective appointees will be asked to sign a certification that if appointed, they will apply the provisions of the Code in the conduct of their duties.

## ***Oath of Office***

Following appointment, the new member is scheduled to take the Oath of Office administered by the Clerk of the Council and as required by the City Charter either at the following City Council meeting or during business hours in the Clerk's Office. Upon completion of the Oath, the member is eligible to attend and participate in board/commission meetings.

## ***Oversight Board\*\****

The Oversight Board had a 4-year term designated by California State Governor Jerry Brown that expired in 2016. The duties have since been transferred to the County of Orange who will oversee the Redevelopment projects/obligations until termination. Please refer to the Auditor Controller's Office website for detailed information at <http://ocauditor.com/ob/>.

## ***Workforce Development Board appointment process\*\****

The Workforce Development Board members are appointed by the Santa Ana City Council, but nominated from one of the 25 representatives that comprise the Board.

## **TERM OF OFFICE / LIMITS**

In 1966, at the same election establishing City Council term limits, the voters of the City of Santa Ana amended Section 901 of the Charter creating term limits for the City's representatives on its boards and commissions. This Charter provision, as further revised by the voters at the November 7, 2006, February 5, 2008, and November 6, 2012 General Municipal Elections and states:

"...the members of such boards and commissions shall serve for a term of four (4) years and until their respective successors are appointed and qualified, but in no event shall any person be eligible for reappointment who has served three (3) consecutive terms of four (4) years each, irrespective of what seat or seats the member is appointed to by the City Council. Notwithstanding the foregoing, one seat shall be a city-wide seat having four (4) two (2) year terms which coincides with that of the Mayor".

In 1983, a Charter amendment was approved by the voters, which provided that the terms of members of the City boards and commissions established by the Charter or by ordinance shall run concurrently with the terms of the City Councilmembers. Following the 2006 General Municipal Election, Councilmember terms begin at 6:00 p.m. on the second Tuesday of December following certification of election results, and each member shall serve until a successor is appointed and qualified.

The 2006 Charter amendment provided that the terms of office for members of seven member boards would be staggered so that three terms would commence at one general election, and the remaining terms would begin at the next general election. One seat, as designated by the City Council, shall be designated as a city-wide seat.

Beginning with terms starting immediately following the 2006 general election, for boards and commissions with at least seven (7) members, the City Council shall designate the seats by the six (6) wards and one (1) city-wide. This designation is solely for the purpose of nominations and calculations of terms as provided in Charter Section 901.

Tenant representatives on the Community Redevelopment and Housing Commission are not subject to term limits per state law, and may serve an unlimited number of terms at the City Council's pleasure.

## **TYPE OF MEMBERS**

### ***Voting Members***

With the exception of the education/school representatives on the Board of Recreation and Parks, voting members are appointed by the City Council but may be nominated by other entities as specified in this handbook.

Following are the types of voting members:

- ✓ *Regular members* are appointed and may be removed by the affirmative votes of a majority of the Council.

- ✓ *Alternate members* are nominated and appointed by the City Council to represent the Youth Commission. They vote only during the absence of their regular member.
- ✓ *Community representatives* include the two education/school representatives nominated by the Garden Grove and Santa Ana Unified School Districts on the Board of Recreation and Parks, and the business representatives nominated by the Santa Ana Chamber of Commerce and the Hispanic Chamber of Commerce of Orange County on the Environmental and Transportation Advisory Committee. (These latter two positions are confirmed by the City Council).
- ✓ *Ex-officio representatives* are members of the Community Redevelopment and Housing Commission and the Planning Commission appointed by their peers to sit on the Historic Resources Commission.
- ✓ *Tenant representatives* are nominated and appointed by the City Council. State law requires the appointment of these members to represent public housing assistance beneficiaries. The City's two tenant representatives serve on the Community Redevelopment and Housing Commission, but can vote only on housing matters.

### ***Non-Voting Members***

Non-voting members are bona-fide members who actively participate in board meetings except they cannot make, second, or vote on Board motions. They are not counted for purposes of determining whether a quorum exists:

- ✓ *Associate members* are nominated and appointed by the City Council to represent the Youth Commission (ages 11-14).
- ✓ *Student representatives* are appointed by the local high schools to serve on the various City boards, including the Board of Parks and Recreation, Environmental and Transportation Advisory Committee, and the Community Redevelopment and Housing Commission.

### ***Student Representatives***

With the exception of the Youth Commission, membership had traditionally been reserved for the adult members of the community; however on January 18, 1994 the Santa Ana City Council adopted an innovative City policy to include student representatives from the local high schools on the City's boards and commissions. The policy recognizes the City's single, largest demographic group--Santa Ana youth--as an important stakeholder in the City's future. Participating on City boards or commissions allows youth an opportunity to develop leadership skills, to have a meaningful voice in City affairs, and to contribute to the community at an early age. Student representatives are selected by one of the many high schools in the City, on a rotating basis. Currently, the Community Redevelopment and Housing Commission, Environmental and Transportation Advisory Committee and the Board of Parks and Recreation have a recognized seat for student representatives.

## **ATTENDANCE - REMOVAL FROM OFFICE**

For advisory bodies to function effectively and accomplish their goals, all members must be active participants. This means all members must be present at all regular and special meetings. City Council reviews the attendance report for semi-annually and may make recommendations for removal for excessive absences. Pursuant to a City Council policy adopted in 1979, the City Council may remove members who incur four (4) unexcused absences within a 6-month attendance reporting period. In addition, City Charter Section 901 provides that a member is automatically removed if absent from two (2) consecutive regular meetings, unless by permission of the board, or fails to attend at least one-half (1/2) of the regular meetings of the board, commission or committee for any reason within a calendar year. A member is automatically removed if he or she is convicted of a crime involving moral turpitude, or ceases to be a qualified voter of the City.

Members should inform the staff liaison prior to the meeting if they will be unable to attend.

## **RESIGNATION PROCESS**

Please contact the department liaison and Clerk of the Council when resigning. A resignation form is available for your convenience, but a phone call, e-mail or letter notifying the City will suffice.

If you move out of the City limits, your seat will be vacated immediately.

## **OUT-OF-CITY RESIDENCY (COLLEGE STUDENTS)**

Due to the City's residency requirement, students attending school or college outside of the City limits automatically forfeit their seat on the board, commission or committee. However, the City Council strongly encourages re-engagement upon graduation or return to the City.

## **FILLING VACANCIES**

Generally, when vacancies occur, the Mayor or a Councilmember submits the name of an applicant for nomination to the Clerk of the Council for placement on the City Council Agenda. Usually the individual has an application on file, if not one is requested by the Clerk of the Council. Once the application is received, the Police Department conducts a routine background check on the nominee. At the City Council meeting, the City Councilmembers vote to approve or reject the nomination.

## **MADDY ACT (ANNUAL EXPIRING TERMS REPORT)**

California Government Code §54972, also known as The Maddy Act, requires local agencies to prepare an appointments list of all regular and ongoing boards, commissions and committees which are appointed by the City Council. This list must be prepared by December 31 of each year and shall contain the following information:

- ✓ A list of all appointive terms that will expire during the next calendar year noting the name of the incumbent appointee, the date of appointment, the date the term expires, and the qualifications for the position
- ✓ A list of all boards, commissions, and committees whose members serve at the pleasure of the City Council, and the qualifications for each position

Whenever an unscheduled vacancy occurs on any board, commission, or committee for whom the legislative body has the appointing power, whether due to resignation, death, termination, or other causes, a special vacancy notice shall be posted in the Office of the Clerk and the Santa Ana Public Library.

### **COMPENSATION**

Except for student representatives on the various commissions, all other members receive compensation for their services and as listed in the Boards, Commissions, and Committees In-Brief table. Member compensation is set by resolution and approved by the City Council. Prior to receiving a stipend, a member must complete the PARS form, discussed in the Filings, Disclosure and Training section of this handbook.

### **ORIENTATION/TRAINING**

Board, Commission and Committee members upon appointment must attend an orientation training provided by the Liaison Agency and any additional trainings as may be required pursuant to State Law or City Council direction.

### **BUSINESS CARDS**

City issued business cards are not provided to appointed officials, unless there is a business purpose and is authorized by the City Manager or City Council.

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## **SECTION 2: MEETINGS**

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## **OPEN MEETINGS LAW (RALPH M. BROWN ACT)**

The Brown Act generally requires advisory bodies to conduct public meetings. A “meeting” is considered to take place any time that a quorum of the body gathers to discuss that body’s business. The Brown Act prohibits a quorum from meeting privately. The Brown Act specifically prohibits “any use of direct communication, personal intermediaries or technological device employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on any item by the members of the legislative body.” Therefore, the prohibition extends not only to personal contacts of the members among themselves outside the public meeting, but it also prohibits “serial” meetings whereby information is ultimately exchanged among a quorum whether or not simultaneously in one another’s presence. The law further provides that all persons must be permitted to attend any meeting, and to address the Board on matters within the Board’s jurisdiction. The Brown Act definition of a legislative body includes all of Santa Ana’s boards and commissions. The agenda must be posted in a conspicuous location accessible to the public and shall contain the time and location of the meeting. No action or discussion is allowed on any item not listed on the agenda. Agendas and Minutes for all meetings are posted at: <http://www.santa-ana.org/coc/granicus.asp>.

## **ROBERT’S RULES OF ORDER - PARLIAMENTARY PROCEDURE**

Meetings are conducted according to parliamentary procedure. The Chair directs the meeting, and his/her rulings must be followed unless they are overruled by the body.

When a member wishes to propose an action on a particular item on the posted agenda, the member makes a motion. 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 that we...”*
3. Another member seconds the motion: *“I second the motion.”*
4. The Chair restates the motion and asks for discussion on the motion.
5. When the Chair determines that there has been enough discussion, the debate may be closed with: *“Is there any further discussion?”*
6. If no one asks for permission to speak, the Chair then puts the question to a vote: *“All those in favor say aye.” “All those opposed say nay.”* The Chair should restate the motion prior to the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
7. After the vote, the Chair announces the vote, i.e. by unanimous consent matter approved or by a 5-2 with member xxx and yyy dissenting, etc.

Properly phrasing a motion can be difficult and corrections may be necessary before it is acted upon. Until the Chair states the motion, the member making the motion may rephrase or withdraw it. Only motions that are voted on will appear in the minutes.

## **LIAISON AGENCY**

Each body has a designated City agency or department that acts as the liaison agency. These agencies provide administrative, technical, and other support services to help their respective boards conduct business. Liaison agencies are listed by board in the directory section of this handbook. The executive director and recording secretary for the agency are lead contacts.

## **SCOPE OF AUTHORITY**

Boards, Commissions or Committees are not involved in administration or operation of City departments. Appointed official's, either individually or collectively, may not direct administrative staff to initiate programs and may not conduct major studies or establish policy without the approval of the City Council. City staff is available to provide general staff assistance only.

## **QUORUM**

At any meeting, a majority of total members shall constitute a quorum for purposes of conducting business. Thus, if a body has seven members, but only six seats filled it requires four present and four votes to approve items.

## **ELECTION OF CHAIR AND VICE CHAIR**

A Chair and a Vice Chair are elected by the members of the board, commission or committee on an annual basis ***in July, as required by Charter Section 904.***

## **ROLE AND RESPONSIBILITIES OF THE CHAIR**

The Chair shall preserve order and decorum at all meetings, announces the votes and decide questions of order. The Chair is responsible for ensuring the effectiveness of the group process. A Chair balances moving the discussion forward with involving all members and allowing for adequate public participation. In the absence of the Chair, the Vice Chair shall act as the presiding officer.

## **MEETING PROTOCOL**

It is the Chair's role to facilitate meeting protocol. Staff liaisons may assist the Chair in starting the meeting on time, and also provide guidance in meeting protocol. Staff may also facilitate and promote effective communication.

### **Proceedings**

- Start meetings on time. Keep the agenda in mind in order to give each item the appropriate time.

- Announce at the start of the meeting if the order of agenda items is to be rearranged either for convenience, response to those attending only for certain items, or for better pacing of the agenda.
- Let the Chair run the meeting.
- Be fair, impartial, and respectful of the public, staff and each other. Give your full attention when others speak.
- Trust your own good judgment on decisions.
- Keep in mind that people may be attending a meeting for the first time and may be unfamiliar with the advisory body procedures. In your discussion, either avoid or explain technical terms or verbal shorthand.
- Listen to audience concerns.
- Don't engage in side conversations or otherwise be distracted.
- Don't engage the public in debate.
- Remember that your advisory body exists to take actions. It is not simply a discussion group or debating society.
- End meetings at a reasonable hour.

## **MEETING TYPES**

Boards and commissions may hold two types of meetings: regular and special meetings. The staff liaison to the body is responsible to prepare and post prior to the 72-hour posting deadline for regular meetings and 24-hours prior for a special meeting. The staff liaison is also responsible for noticing the members of meeting cancellations, adjournments, and/or change of locations.

### ***Regular Meetings***

Regular meetings are held at the time and place specified in the resolution establishing procedures, commonly referred to as bylaws. Regular meetings are posted at least 72-hours prior to the meeting. Regular meetings may be "adjourned to" another date and time and are considered "regular adjourned meetings."

### ***Special Meetings***

Special meetings may be held at a different time or place to discuss specific issues as noted on the meeting agenda, as long as the meeting has been properly noticed at least 24-hours in advance and called by either the Chair or a majority of the Board, Commission or Committee.

### ***Adjourned Regular Meetings***

A legislative body may adjourn or continue any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment or continuance.

## **AGENDAS**

State law requires that an agenda for each advisory meeting be posted prior to the meeting. The agenda shall state the time and place of the meeting and a brief description of matters to be heard. The agenda shall also provide an opportunity for members of the public to be heard at the meeting regarding matters within the jurisdiction of the advisory body. The staff liaison assigned to each advisory body is responsible for preparation of the meeting agenda. A copy of the agenda is e-mailed to each member as well as to any individual requesting a copy.

Agendas, draft Minutes from the previous meeting, agenda reports, and audio recording of meetings are posted on the City's website and available at: <http://www.santa-ana.org/coc/granicus.asp>.

### ***How to add items to the Agenda***

The Agenda is set and approved by the executive director of liaison agency. As a courtesy the Chair may review the Agenda before posting, but not legally required. A board, commission or committee member may request that an item be added to the subsequent Agenda during Member Comments. Members of the public do not have the authority to add items to the Agenda, although they can speak on any item on the Agenda or within subject jurisdiction of the board, commission or committee during public comments.

## **MEETING MINUTES**

The staff liaison assigned to a board, commission and/or committee and is responsible for preparation of the minutes of each meeting. Meeting minutes shall be a brief record of matters discussed and actions taken by the body. The minutes shall also list the names of those persons speaking during the public comment period. Minutes should not reflect personal opinions and/or comments that do not directly relate to actions taken by the body. Minutes of the meeting shall be submitted to the body for approval at its next meeting and shall be signed by the recording secretary. Audio recordings of all meetings will be available and posted on the City's website starting in January, 2016.

## **E-MAIL COMMUNICATION**

E-mail communication may lead to the exchange of information intended to, or which may, create collective concurrence among a quorum of board, commission or committee, e-mail communication between members relative to business, should be avoided. While three members of a seven-member body, for example, may appropriately communicate with one another by way of e-mail, the "forwarding" of such an e-mail message on to a fourth or subsequent member would result in a Brown Act violation. Please note that such communication is subject to the Public Records Act and will need to be disclosed upon request.

All communication from the public should be sent through the City e-mail system. Comments on agenda items or within subject jurisdiction of any advisory body should be e-mailed to [eComment@santa-ana.org](mailto:eComment@santa-ana.org) to assure all comments are captured and entered into the record.

## **BY-LAWS**

By-laws are written rules and regulations as to the time, place and date of regular meetings in addition to rules and regulations it deems necessary to conduct the board, commission or committee business including. Such rules and regulations shall not be inconsistent with the laws of the State of California or with the ordinances, resolutions or regulations of the City Council. By-laws are revised from time to time. Please contact the Recording Secretary to obtain a copy of the most current by-laws. A copy will be provided to newly appointed officials during orientation.

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## **SECTION 3: FILINGS, DISCLOSURES AND TRAINING**

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## **DESIGNATION OF BENEFICIARY FORM FOR PUBLIC AGENCY RETIREMENT SERVICES (PARS)**

The Designation of Beneficiary Form for Public Agency Retirement Services (PARS) is required by the City's Finance Department in order to set-up an account for each member receiving a stipend. The form is to be completed and returned to the Recording Secretary on or before the first meeting attended. Appointed officials are automatically enrolled with PARS in lieu of Social Security and may withdraw funds upon terminating service with the City of Santa Ana.

## **CITY OF SANTA ANA CODE OF ETHICS AND CONDUCT CERTIFICATION**

Each current appointed member is required to submit a signed certification that he/she is aware of the provisions of the code and pledge that he/she will apply the provisions of the code in the conduct of his or her duties. As part of the application process for membership on the City's Boards and Commissions, prospective appointees are asked to sign a certification that, if appointed, they will apply the provisions of the code in the conduct of their duties.

On February 5, 2008, the voters of the City of Santa Ana approved a measure adding Section 401.05 to the City Charter which requires the adoption of a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions and committees. This Code is intended to provide high standards of conduct for all elected officials and members of appointed boards, commissions, and committees and also to increase public confidence in City government.

## **STATEMENT OF ECONOMIC INTEREST FORM (aka FPPC 700: CONFLICT OF INTEREST CODE)**

The California Political Reform Act requires that assets and income of public officials, which may be materially affected by their official actions, should be disclosed. The purpose of financial disclosure is to alert the public as to personal interests that might be affected while they are performing their official duties, i.e., making governmental decisions. Disclosure forms help inform the public about potential conflicts of interest, and are administered by the Fair Political Practices Commission (FPPC).

Disclosure is made on a form called "Statement of Economic Interests" and often referred to as FPPC Form 700: Conflict of Interest Code. This form is required to be filed by members of the following boards and commissions:

- ✓ Community Redevelopment and Housing Commission
- ✓ Environmental and Transportation Advisory Committee
- ✓ Historic Resources Commission
- ✓ Personnel Board
- ✓ Planning Commission

Filing dates are as follow:

- ✓ Annual Filings. Must be filed with the Clerk of the Council by April 1<sup>st</sup> of each year.
- ✓ Assuming / Leaving Office. Must be filed with the Clerk of the Council within 30 days of assuming or leaving office.

### ***E-Filing***

In January, 2014 the City of Santa Ana Introduced Netfile to better assist filers in completing their Statements. To e-file, please follow these instructions:

1. On the Internet, log in to the system at: <https://netfile.com/filer>
2. The e-mail address assigned to you in the system is: (e-mail on file)
3. To receive a password from the system, click on the "New User? Request a Password" link to the right of the log-in form. Submit your e-mail address to receive an e-mail from the system containing a link to reset your password. Click on the link to display a web page containing your password. Make sure to record your password.
4. Log in using your e-mail address and password and begin the Form 700 filing process.

After you log in, click the "Get Help for this Page" button for information and instructions. Each page also includes links to short instructional videos. At the end of the process, you can create a draft document for review. When you are satisfied with the document, please e-file your document. You do NOT have to print, sign and submit a paper copy of your e-filed statement.

Your data is saved in the system for future filings; next time, you will only need to edit any changes. This will increase the accuracy of your filing and will help avoid filing amendments.

### **DISQUALIFICATION (aka ABSTENTION)**

The Political Reform Act provides that if a member has a conflict of interest, the official is required to disqualify himself or herself from making or participating in a board decision, or from using his or her official position to influence or attempt to influence a governmental decision. If a member suspects that he/she may have a conflict, he/she should contact the City Attorney advisor to the Board.

In many cases, a board/commission member will need additional guidance from the FPPC or an attorney to determine whether disqualification is required. FPPC staff advisors may be reached at 1-866-ASK-FPPC. The Commission's website address is: [www.fppc.ca.gov](http://www.fppc.ca.gov).

### **PLANNING COMMISSION EX PARTE COMMUNICATION DISCLOSURE**

In February, 2014, the Planning Commission approved a disclosure form for any and all ex parte communication with individuals that have a discretionary action before the



Commission. The form was created to facilitate requirements of the City's Code of Conduct and Ethics, the Brown Act and laws governing ex parte communications and due process. The form must be completed and returned to the Recording Secretary at least 72-hours prior to a meeting or immediately thereafter if the Agenda for said meeting has already been posted. Please note that the forms are retained as part of the public record and will be disclosed. A copy of the form is attached as Appendix 5 for review and information.

### **ETHICS TRAINING (ASSEMBLY BILL 1234)**

On January 1, 2006, AB 1234 requires specified local officials to receive two hours of training that cover both conflict of interest laws and ethics principles. This law requires all elected officials, appointed city commissioners, board, and committee members to receive training within a year of their taking office. The training is valid for a two-year period at which point designated officials have to repeat the training.

The training is required by the State of California for any appointed official that receives compensation or is eligible for reimbursement of expenses (such as Planning Commissioners).

Annually, the City Attorney's Office provides an in-house session and a self-study course is also available online at <http://localethics.fppc.ca.gov/login.aspx>.

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## **SECTION 4: DIRECTORY**

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**BOARD, COMMISSION OR COMMITTEE  
IN-BRIEF**

<b>Arts and Culture Commission</b>	\$50 per meeting	3 <sup>rd</sup> Thur. of the month, 4:30 p.m. City Council Chamber 22 Civic Center Plaza
<b>Community Redevelopment and Housing Commission **</b>	\$50 per meeting - 3 mtgs. mo. max. and \$20 auto allowance	4 <sup>th</sup> Wed. of the month, 4:30 p.m. City Council Chamber 22 Civic Center Plaza
<b>Environmental and Transportation Advisory Committee (ETAC)*</b>	\$50 per meeting – 2 mtgs mo. max.	2 <sup>nd</sup> Tuesday of the month, 7:30 a.m. City Hall, Ross Annex-Room 1600, 22 Civic Center Plaza
<b>Historic Resources Commission **</b>	\$50 per meeting - 2 mtgs. mo. max.	Monthly, 1st Thursday of the month, 4:30 p.m. City Council Chamber 22 Civic Center Plaza
<b>Personnel Board **</b>	\$50 per meeting – No limit on number of meetings	4th Wednesday of the Month, if needed, but in no event shall more than three (3) months intervene between meetings of such board at 6:00 p.m. City Council Chamber 22 Civic Center Plaza
<b>Planning Commission **</b>	\$50 per meeting – 3 mtgs. mo. max. and \$50 auto allowance	2nd & 4th Monday of the month, 5:30 p.m. City Council Chamber 22 Civic Center Plaza
<b>Recreation and Parks (Board of)</b>	\$50 per meeting - 2 mtgs. mo. max.	4th Wednesday of the month, 5:30 p.m. For meeting location, please check agenda
<b>Workforce Development Board*</b>	None	3 <sup>rd</sup> Thursday of odd months, 8:00 a.m. Rancho Santiago Community College District Board Room, Suite 107 2323 N. Broadway
<b>Youth Commission</b>	1 mtg. mo./ 3 spec. mtgs. max per year \$25 per mtg.– Reg. \$10 per mtg. – Alt. \$10 per mtg. – Assoc.	3 <sup>rd</sup> Friday of the month, 5:30 p.m. City Council Chamber 22 Civic Center Plaza

**\*\*** Board / Commission members are required to file Statement of Economic Interest (FPPC Form 700).

## **ARTS AND CULTURE COMMISSION**

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### Liaison Agency

Community Development Agency  
(714) 647-5360

### Meeting Day, Time, and Place

3rd Thursday of each month, 4:30 p.m.  
City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting

### Responsibilities

The commission shall act as an advisory body to the City Manager and the City Council and make recommendations regarding but not limited to:

1. Policies, priorities and plans for the development and improvement of arts and cultural activities in Santa Ana, and, in conjunction with other appropriate agencies, in the greater Santa Ana area.
2. Coordinating with the private sector and other governmental agencies in promoting arts and cultural excellence as a tool for the encouragement of economic development, business relocation and tourism.
3. Organizing and promoting activities which celebrate the City and its unique cultural heritage.
4. Allocation and budgeting of funds for arts and cultural funding.
5. Payments for the design, execution and placement of public art projects, within established appropriations for the art projects.
6. Encouraging the use of local artists in City public art projects.
7. Guidelines for accepting, selecting, purchasing, commissioning, placing and preserving art projects and other City art acquisitions, gifts or extended loans of art.
8. Make recommendations to the City Council on de-accessioning of artworks, when necessary;

The commission shall also advocate for arts education, cultural diversity, the Sister Cities Program, and other initiatives that further the growth and sustainability of the arts and cultural community in Santa Ana area.

In addition, the Commission shall have such other powers and duties as may be appropriate in carrying out the purposes and goals of this Division and as set forth in reports or recommendations adopted by the City Council. Consider matters referred to it by the City Manager or the City Council.

### Commission Membership

*Regular Members = 7*

### Established

By Ordinance No. NS-2856, December 16, 2013, Santa Ana Municipal Code Section 2-553

## **COMMUNITY REDEVELOPMENT AND HOUSING COMMISSION**

---

### Liaison Agency

Community Development Agency  
(714) 647-5360

### Meeting Day, Time, and Place

4<sup>th</sup> Wednesday of the month, 4:30 p.m.  
City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting -maximum 3 meetings per month  
\$20 per month automobile allowance

### Duties

Conducts hearings to adopt plans and plan amendments for various redevelopment project areas; submits reports and prepares recommendations on business retention and attraction programs (e.g., enterprise zone), tax increment finance, school district partnerships, and other matters delegated by the Successor Agency (formerly known as the Community Redevelopment Agency); and recommends approval of development agreements for various projects.

Also, advises on and recommends housing programs including neighborhood improvement programs, federal housing voucher and certificate programs, low interest loans to rehabilitate residential property, and various other federal and state programs; and performs other functions delegated by the Housing Authority.

*Required to file Statement of Economic Interest (FPPC Form 700).*

### Commission Membership

*Regular Members = 7*

*Tenant Representatives = 2*

*Student Representative (non-voting) = 1*

*NOTE: One of the two tenant representatives must be at least 62 years of age. Tenant representatives are not subject to term limits but are required to be tenants served by the Housing Authority during their term of office. Tenant representatives can only vote on housing matters. No member of the Community Redevelopment and Housing Commission shall acquire any interest in any property included within any project area undertaken by the Community Redevelopment Agency. No member of the Community Redevelopment and Housing Commission shall acquire any direct or indirect interest in any housing project or any property included or planned to be included in any project.*

### Established

By Ordinance No. NS-1150 on 02/14/1973, Amend. Ordinance No. NS-2237 on 12/19/1994  
Santa Ana Municipal Code Section 2-621, State of California Health and Safety Code Sections 33201, 33202, 34291, and 34292  
Automobile allowance authorized pursuant to Ordinance No, NS-1985

## **ENVIRONMENTAL AND TRANSPORTATION ADVISORY COMMITTEE**

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### Liaison Agency

Public Works Agency  
(714) 647-5662

### Meeting Day, Time, and Place

2nd Tuesday of each month, 7:30 a.m.  
City Hall, Room 1600  
20 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting - maximum 2 meetings per month

### Duties

As more fully described by Santa Ana Municipal Code section 33-184, the duties of ETAC shall consist of acting in an advisory capacity to the City Council, in the study, review, and recommendation with regard to the removal, planting, replanting or disposition of public trees along city streets in the public right of way. The duties of ETAC shall also consist of acting in an advisory capacity to the Executive Director of the Public Works Agency, in the study, review, and recommendation with regard to transportation issues, streetscape issues, and general water and wastewater policies

*Required to file Statement of Economic Interest (FPPC Form 700).*

### Committee Membership

*Regular Members = 7*

*Business Representatives = 2* [Santa Ana Chamber of Commerce (1) and Hispanic Chamber of Commerce of Orange County (1)]

*Student Representative (non-voting) = 1*

### Established

By Resolution No. 73-149 on 12/10/1973; and Resolution 2017-21 on 5/16/2017

Renamed and authority expanded by Resolution No. 91-112 on 12/2/1991

Reorganized by Resolution No. 92-103 on 12/21/1992

Amended by Ordinance No. NS-2414 on 12/20/99

Santa Ana Municipal Code Section 33-183

## **HISTORIC RESOURCES COMMISSION**

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### Liaison Agency

Planning and Building Agency  
(714) 667-2732

### Meeting Day, Time, and Place

Monthly, 1<sup>st</sup> Thursday the month, 4:30 p.m.  
City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting - maximum 2 meetings per month

### Duties

Considers all matters referred by the City Council or the City Manager; recommends policies and regulations regarding the protection of the historic heritage of Santa Ana through designation of historical property, historic districts, and neighborhoods; review all requests for exterior work or demolition of historic structures; recommends policies and regulations regarding the protection, reuse and rehabilitation of historical property; encourages public understanding and involvement in historic and architectural heritage.

*Required to file Statement of Economic Interest (FPPC Form 700).*

### Committee Membership

*Regular Members = 7*

*Ex-officio Members = 2 [Planning Commission (1), Community Redevelopment and Housing Commission (1)]*

*NOTE: Commission members should possess an expertise and experience in the disciplines of architecture, history, architectural history, planning or other historic preservation related disciplines, such as urban planning, to the extent that such professionals are available in the Community.*

### Established

By Ordinance No. NS-2363 on 08/03/1998 and SAMC Sec. 2-370

## PERSONNEL BOARD

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### Liaison Agency

Personnel Services  
(714) 647-5348

### Meeting Day, Time, and Place

4th Wednesday of the Month, if needed, but in no event shall more than three (3) months intervene between meetings of such board at 6:00 p.m.

City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting - no limit on number of meetings

### Duties

Hears appeals related to disciplinary suspension, demotion or dismissal of permanent officers or employees in the City's Civil Service system; studies and makes recommendations on the formulation and/or evaluation of civil service policies, plans and procedures; conducts public hearings on proposed amendments or repeals to the Civil Service rules and regulations; and considers matters referred by the City Council or City Manager.

*Required to file Statement of Economic Interest (FPPC Form 700).*

### Board Membership

*Regular Members = 7*

*NOTE: Candidates for public office, city employees, or officers in partisan organizations may not sit on this board. Also, unlike other members who serve at the City Council's pleasure, Personnel Board members may only be removed from office for cause.*

### Established

By City Charter Section 900 on 11/04/1952 (Powers and Duties contained in Charter Section 912)



## **PLANNING COMMISSION**

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### Liaison Agency

Planning and Building Agency  
(714) 667-2732

### Meeting Day, Time, and Place

2nd and 4th Mondays of each month, 5:30 p.m.  
City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

\$50 per meeting - maximum 3 meetings per month  
\$50 automobile allowance per month

### Duties

The Planning Commission is the lead advisory body in the determination of what uses may be made of property in the city and what form and shape the community will take in the future. With these community goals established, the Planning Commission periodically reviews the city's General Plan and evaluates individual proposals to make sure that they fit with the plan, which the community has adopted. The commission also annually reviews the city's capital improvement program solely for consistency with the General Plan.

The Planning Commission advises the City Council on the adoption of zoning regulations, annexation issues, and property subdivision. The Commission has been delegated the authority to consider applications for conditional use permits and variances and to provide guidance on the interpretation of the Uniform Codes for building construction.

*Required to file Statement of Economic Interest (FPPC Form 700) and Ex Parte Communication Disclosure form.*

### Commission Membership

*Regular Members = 7*

### Established

By City Charter Section 900 on 11/04/1952 (Powers and Duties contained in Charter Section 910)

Automobile allowance authorized pursuant to Ordinance No, NS-1985

## **RECREATION AND PARKS (BOARD OF)**

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### Liaison Agency

Parks, Recreation and Community Services Agency  
(714) 571-4258

### Meeting Day, Time, and Place

4th Wednesday of each month, 5:30 p.m.,  
For meeting locations, please check Agenda

### Compensation

\$50 per meeting - maximum 2 meetings per month

### Duties

Considers matters referred by the Council, City Manager, or Parks, Recreation and Community Services Agency Executive Director such as donation offers, annual recreation and parks budget; initiates studies on recreation and park issues, and solicits cooperation between public and private agencies on recreation and park matters; assumed duties formerly assigned to the Cable Television Advisory Board including annual review of cable franchise; investigates issues and makes recommendations regarding public cable television services.

### Board Membership

*Regular Members = 7*

*Community Representatives (Education) = 2*

[Santa Ana Unified School District = 1 and Garden Grove Unified School District = 1]

*Student Representatives (non-voting) = 2*

### Established

By City Charter Section 900 on 11/04/1952 (Powers and Duties contained in Charter Section 908)

## **WORKFORCE DEVELOPMENT BOARD**

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### Liaison Agency

Community Development Agency  
(714) 647-5360

### Meeting Day, Time, and Place

3<sup>rd</sup> Thursday of odd months at 8:00 a.m.  
Rancho Santiago Community College District Board Room  
2323 N. Broadway, Suite 107  
Santa Ana, CA

### Compensation

None

### Responsibilities

The purpose of the Workforce Development Board shall be to work in partnership with the City Council to provide workforce policy guidance for the City's workforce system in accordance with the Workforce Innovation and Opportunity Act of 2014, applicable federal and state laws, rules and regulations to satisfy the employment and labor demand needs of residents and business community.

### Board Membership

Twenty-five (25) Regular Members

Per WIOA Section 107(b)(2)(A) a majority of members shall be representatives of business who (i) are owners of businesses, chief executives or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority; (ii) represent businesses, including small businesses, or organizations representing businesses.

Membership structure approved by City Council and the California Workforce Development Board:

- 13 business representatives;
- 4 representatives of labor organizations;
- 1 representative from a joint labor management or union affiliated registered apprenticeship program;
- 1 representative from a WIOA Title II Adult Education and Literacy provider,
- 1 representative from an institution of higher education;
- 1 representative from the economic and community development;
- 1 representative from the state Employment Development Department (EDD);
- 1 representative from the Department of Rehabilitation – Title I programs;
- 1 representative from the Department of Social Services Agency, TANFF;
- 1 representative from a community based organization.

### Established

Resolution No. 2016-031, approved May 17, 2016.

## **YOUTH COMMISSION**

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### Liaison Agency

Parks, Recreation and Community Services Agency  
(714) 571-4200

### Meeting Day, Time, and Place

3<sup>rd</sup> Friday of the Month at 5:30 p.m.  
City Council Chamber  
22 Civic Center Plaza  
Santa Ana, CA

### Compensation

Regular members - \$25 per meeting

Alternate member - \$10 per meeting

Associate members - \$10 per meeting

1 meeting per month plus up to 3 special meetings per year

*NOTE: Alternate members serving in the absence of Regular members will be compensated at the rate of \$25 per meeting.*

### Duties

Acts as an advisory body to the City Council and reviews and recommends programs that stimulate a prosperous environment for youth; recommends procedures, policies, and/or legislation to the City Council; and provides assistance to community agencies engaged in fostering respect for youth.

### Commission Membership

*Regular Members* = 7 (ages 16-20) – Voting Members

*Alternate Members* = 7 (ages 14-18) – Proxy Voter (for absent Regular Member only)

*Associate Members* = 7 (ages 11-14) - Non-Voting

*NOTE: Members must be students who reside in Santa Ana. All members under the age of 18 shall provide written proof of parental or guardian permission to qualify for appointment.*

### Established

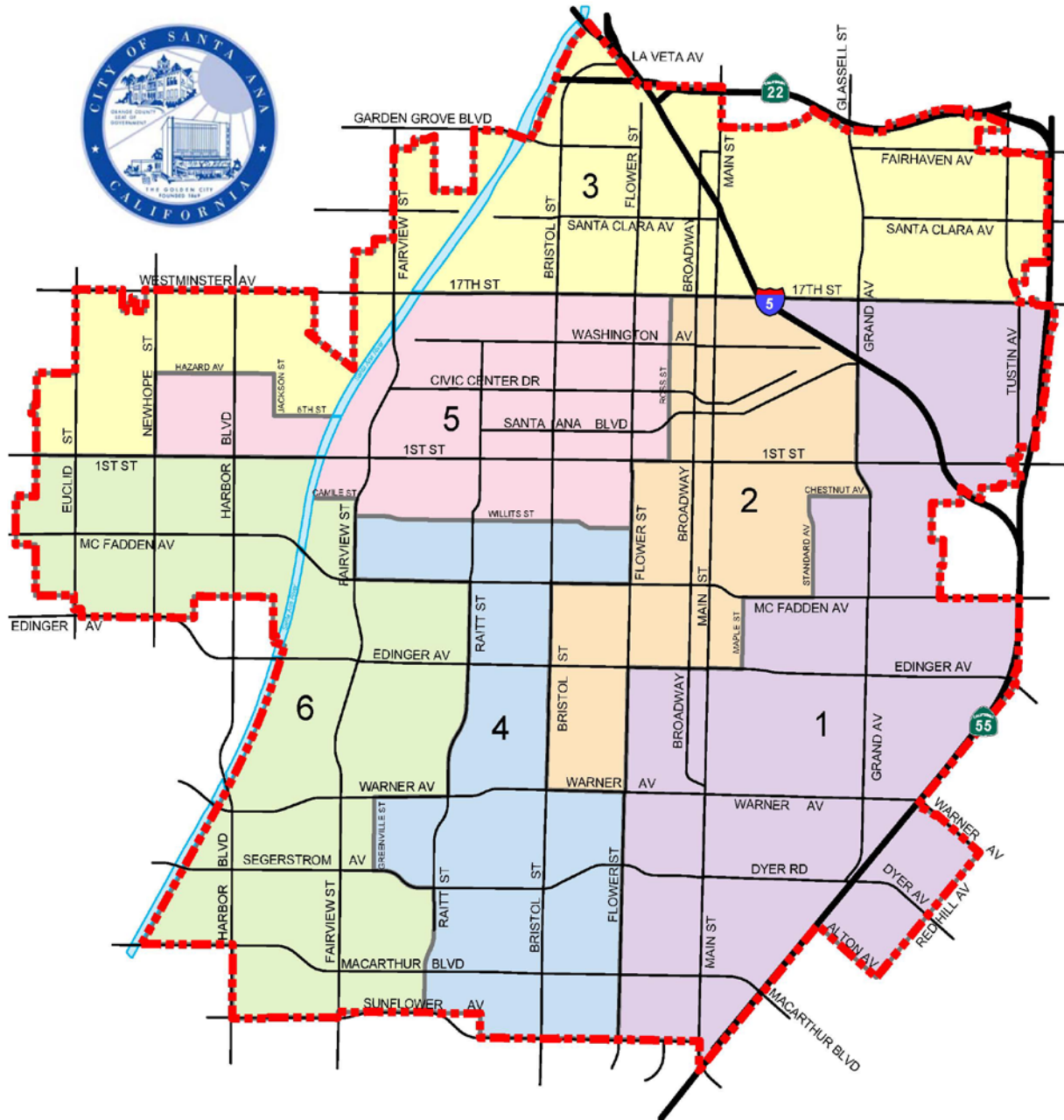
By Ordinance No. NS-2403 on 09/20/1999; By Ordinance No. NS- 2737 on 03-05-07  
Santa Ana Municipal Code Sections 2-450 through 2-457

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## **SECTION 5: APPENDICES**

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## APPENDIX 1: CITY WARD MAP



**MAYOR**

**Miguel A. Pulido**

**WARD 1**

**Vincent Sarmiento**

**WARD 2**

**David Penaloza**

**WARD 3**

**Jose Solorio**

**WARD 4**

**Roman Reyna**

**WARD 5**

**Juan Villegas, Mayor Pro Tem**

**WARD 6**

**Cecilia Iglesias**

## APPENDIX 2: APPLICATION FOR SERVICE



### CITY OF SANTA ANA APPLICATION FOR SERVICE BOARDS / COMMISSIONS / COMMITTEES

Name ( Mr., Mrs., Ms.) \_\_\_\_\_  
FIRST MIDDLE LAST

Home Address \_\_\_\_\_

#### OFFICE USE ONLY

Ward: \_\_\_\_\_ Qualified Elector: \_\_\_\_\_

PD Background: \_\_\_\_\_ Date to Council: \_\_\_\_\_

Zip Code \_\_\_\_\_ Home Phone \_\_\_\_\_ Fax \_\_\_\_\_

E-Mail \_\_\_\_\_ Cell \_\_\_\_\_ Other \_\_\_\_\_

Employer \_\_\_\_\_ Occupation \_\_\_\_\_

Work Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_ Work Phone \_\_\_\_\_

Soc. Sec. No.\* \_\_\_\_\_ Driver's License No. \_\_\_\_\_ Date of Birth \_\_\_\_\_  
\* Required

Years Lived/Worked in Santa Ana \_\_\_\_\_ Language(s) Spoken \_\_\_\_\_

Organizations (Professional, Community, Service or other) \_\_\_\_\_

Qualifications, Experience, Education \_\_\_\_\_

Remarks (attach resume if available) \_\_\_\_\_


List Board(s) / Commission(s) you would like to serve on:  
1) \_\_\_\_\_  
2) \_\_\_\_\_  
3) \_\_\_\_\_

I am a registered voter in the City of Santa Ana. I have completed this application with the knowledge and understanding that any or all items may be verified, and affirm I have received the Ethics Code, understand its provisions, and pledge to conduct my duties consistent with the code if appointed to a City Board or Commission. I consent to the release of information contained in this application to interested parties. I further understand that the Santa Ana Police Department conducts a routine background check on applicants nominated for appointment.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

This application will be retained on file in the Clerk of the Council Office for 2 years.  
Please note that the **Code of Ethics and Conduct Certification** must be signed and received by the Clerk of the Council Office prior to nomination to a commission/board.

## APPENDIX 2: APPLICATION FOR SERVICE - YOUTH COMMISSION

	<b>CITY OF SANTA ANA</b>			<b>Print</b>
	<b>APPLICATION FOR SERVICE YOUTH COMMISSION</b>			<b>Clear Form</b>
Name ( Mr. / Ms.) _____				
	FIRST	MIDDLE	LAST	
Home Address _____		<b>OFFICE USE ONLY</b> Ward: _____ Date to Council: _____ PD Background: _____ Qualified Elector: <u>Yes / No</u> Date Eligible: _____		
Zip Code _____	Home Phone _____	Fax _____		
E-Mail _____	Cell _____	Other _____		
School Name _____				
School Address _____				
City _____	Zip Code _____	Work Phone _____		
Soc. Sec. No.* _____	Driver's License No. _____	Date of Birth _____		
<small>* Required</small>				
Years Lived/Worked in Santa Ana _____		Language(s) Spoken _____		
Participation in school organizations, clubs, community services, etc. _____				
Educational Interests _____				
Remarks (attach resume if available) _____				
I have completed this application with the knowledge and understanding that any or all items may be verified, and affirm I have received the Ethics Code, understand its provisions, and pledge to conduct my duties consistent with the code if appointed to the Youth Commission. I consent to the release of information contained in this application to interested parties.				
SIGNATURE _____		DATE _____		
The above student has my permission to participate on the Youth Commission.				
PARENT/LEGAL GUARDIAN SIGNATURE _____		DATE _____		
<small>*Required</small>				
<small>This application will be retained on file in the Clerk of the Council Office for 2 years. Please note that the <b>Code of Ethics and Conduct Certification</b> must be signed and received by the Clerk of the Council Office prior to nomination to a commission/board.</small>				





**THE CITY OF SANTA ANA**  
**CODE OF ETHICS AND CONDUCT**  
**ADOPTED JUNE 2, 2008**

The people of the City of Santa Ana, at an election held on February 5, 2008, approved an amendment to the City Charter of the City of Santa Ana which states: "The City of Santa Ana shall adopt a Code of Ethics and Conduct for elected officials and members of appointed boards, commissions, and committees to assure public confidence in the integrity of local government elected and appointed officials." Consistent with the vote of the people, the following Code of Ethics and Conduct is hereby adopted by the City of Santa Ana to ensure effective and fair operation of the local government of the City of Santa Ana.

I.

**PREAMBLE**

It is the intent of this code to achieve fair, ethical, and accountable local government for the City of Santa Ana. The people of Santa Ana expect public officials, both elected and appointed, to comply with both the letter and the spirit of the laws of the State of California, the United States of America, and the Charter, Municipal Code, and established policies of the City of Santa Ana affecting the operations of local government. In addition, public officials are expected to comply with the provisions of this Code of Ethics and Conduct established pursuant to the expressed will of the people. All persons covered by this code will aspire to meet the highest ethical standards in the conduct of their responsibility as an elected or appointed official of the City of Santa Ana.

This code addresses various aspects related to the governance of the City of Santa Ana and supplements, but does not supplant other laws and rules that prescribe the legal responsibilities of City officials. These include, but are not limited to, the Federal and State Constitutions, various provisions of the California Government Code (such as the Brown Act and the Political Reform Act), the Labor Code, laws prohibiting discrimination and harassment, and the City of Santa Ana Charter and Municipal Code. Elected and appointed officials are expected to be familiar with these laws to ensure that they exercise their public responsibilities in a proper fashion. This code is not designed to be used as a tool to remove appointed officials, as the City Council retains the right under the Charter and Municipal Code to remove appointed officials in accordance with those provisions.

While it is not possible to anticipate and provide a rule of conduct and ethics for all situations that public officials may face, this Code of Ethics and Conduct is designed to provide a framework to guide public officials in their daily duties.

## **II.**

### **SCOPE**

The provisions of this Code of Ethics and Conduct shall apply to the Mayor and members of the City Council, and to all members of the boards, commissions, and committees appointed by the City Council or the Mayor or the Mayor and City Council, including any *ad hoc* committees. Further, the provisions of this Code of Ethics and Conduct shall only apply to these officials and members acting in their official capacities and in the discharge of their duties.

## **III.**

### **CORE VALUES**

Attitudes, words, and actions should demonstrate, support, and reflect the following qualities and characteristics for the well being of our community. The five core values and expressions that reflect these core values are as follows:

#### **INTEGRITY / HONESTY**

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

#### **RESPONSIBILITY / PROTECTING THE PUBLIC'S INTERESTS**

- I do not accept gifts, services or other special considerations because of my public position.
- I excuse myself from participating in decisions when my or my immediate family's financial interests may be affected by my agency's actions.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual.
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

## **FAIRNESS / ACCOUNTABILITY**

- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner; I make decisions based on the merits of the issue.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I work to contribute to a strong organization that exemplifies transparency and open communication.

## **RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC**

- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.
- I work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed
- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I encourage full participation of all persons and groups; I am aware and observe important celebrations and events which reflect the values of our diverse population.

## **PROPER AND EFFICIENT USE OF PUBLIC RESOURCES**

- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents.

## **IV.**

### **IMPLEMENTATION AND ENFORCEMENT**

City of Santa Ana elected and appointed officials of the various boards, commissions and committees have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. This code of ethics will be most effective

when the elected and appointed officials are thoroughly familiar with it and embrace its provisions.

Upon adoption of this code, all current elected or appointed officials shall be given a copy of the code and asked to affirm in writing that they have received the code, understand its provisions, and pledge to conduct themselves by the code. All new members of the City Council, upon election or reelection, and members of boards, commissions, and committees appointed by the City Council, upon appointment or reappointment, shall be given a copy of the code and are required to affirm in writing they have received the code and understand its provisions, and pledge to conduct themselves by the code. (See Attachment) Additionally, all members of the City Council, boards, commissions, and committees, as part of their AB1234 training, shall be provided additional training clarifying the provisions and application of this code. The City Attorney, or his/her designee, shall serve as a resource person to those persons covered by the code to assist them in determination of appropriate actions consistent with the code.

A periodic review of the code shall be conducted to ensure that the code is an effective and vital document.

This Code of Conduct is intended to be a reflection of the community's values as articulated by the Mayor and City Council as they represent the will of the people of the City of Santa Ana.

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

## **CITY OF SANTA ANA – CODE OF ETHICS AND CONDUCT**

### **CERTIFICATION**

As an elected or appointed official of the City of Santa Ana, California, I herein certify that I have received a copy of the Code of Ethics and Conduct of the City of Santa Ana, have been offered training and assistance in understanding this code, and am aware of the provisions of the code and its application to my responsibilities. Consistent with the code, I pledge the following in the conduct of my duties:

#### **INTEGRITY / HONESTY**

- I am honest with my fellow elected officials, the public and others.
- I do not promise what I believe to be unrealistic.
- I am prepared to make unpopular decisions when my sense of the public's best interests requires it.
- I credit others' contributions to moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position or views.
- I safeguard the ability to make independent, objective, fair and impartial judgments by scrupulously avoiding financial and social relationships and transactions that may compromise, or give the appearance of compromising, objectivity, independence, and honesty.

#### **RESPONSIBILITY / PROTECTING THE PUBLIC'S INTERESTS**

- I do not accept gifts, services or other special considerations because of my public position.
- I excuse myself from participating in decisions when my or my family's financial interests may be affected by my agency's actions.
- I do not give special treatment or consideration to any individual or group beyond that available to any other individual.
- I refrain from disclosing confidential information concerning litigation, personnel, property, or other affairs of the City, without proper legal authority, nor use such information to advance my financial or other personal interests.

#### **FAIRNESS / ACCOUNTABILITY**

- I promote meaningful public involvement in the agency's decision-making processes.
- I treat all persons, claims and transactions in a fair and equitable manner; I make decisions based on the merits of the issue.
- If I receive substantive information that is relevant to a matter under consideration from sources outside the public decision-making process, I publicly share it with my fellow governing board members and staff.
- I work to contribute to a strong organization that exemplifies transparency and open communication.

**RESPECT FOR FELLOW ELECTED OR APPOINTED OFFICIALS, STAFF, AND THE PUBLIC**

- I treat my fellow officials, staff and the public with patience, courtesy and civility, even when we disagree on what is best for the community.
- I work towards consensus building and gain value from diverse opinions.
- I respect the distinction between the role of office holder and staff; I involve staff in meetings with individuals, those with business before the agency, officials from other agencies and legislators to ensure proper staff support and to keep staff informed
- I conduct myself in a courteous and respectful manner at all times during the performance of my official City duties.
- I encourage full participation of all persons and groups; I am aware and observe important celebrations and events which reflect the values of our diverse population.

**PROPER AND EFFICIENT USE OF PUBLIC RESOURCES**

- I do not use public resources, such as agency staff time, equipment, supplies or facilities, for private gain or personal purposes.
- I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the agency, especially its financial stability.
- I demonstrate concern for the proper use of agency assets (such as personnel, time, property, equipment, funds) and follow established procedures.
- I am a prudent steward of public resources and actively consider the impact of my decisions on the financial and social stability of the City and its residents.

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

## APPENDIX 4: RESIGNATION FORM



### CITY OF SANTA ANA BOARD/COMMISSIONS

#### RESIGNATION FORM

In order to comply with the State of California Maddy Act and officially post vacancies in a timely manner, the Clerk of the Council Office is requesting that each board member or commissioner who resigns from City service, immediately notify the Clerk of the Council and the appropriate recording secretary of the Board or Commission in which they serve. The form is to be completed and submitted immediately to the Clerk of the Council, 20 Civic Center Plaza, M-30, Santa Ana CA 92702. Please print or type legibly.

I \_\_\_\_\_, have been a Board member or  
NAME

Commissioner on the \_\_\_\_\_  
BOARD OR COMMISSION

since \_\_\_\_\_ herewith tender my resignation for the following reason:  
DATE  
(optional)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Effective date of resignation: (last day served) \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

(To be prepared by City Staff):

FPPC Statement of Economic Interest Form 700 required:

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

Prepared by the Clerk of the Council Office 12/00



## APPENDIX 5: PLANNING COMMISSION EX-PARTE COMMUNICATION DISCLOSURE FORM

---

**City of Santa Ana**  
**Planning Commission Disclosure Form**  
**Ex Parte Communications**



The City of Santa Ana is committed to providing public access to local government and to ensuring that all members of the public have the opportunity to participate fully in the decision-making process. The City's Code of Ethics and Conduct contains policies regarding individual contact and contact with those who have business before the Commission. In addition, the State Open Meeting Laws (the Ralph M. Brown Act), as well as laws governing ex parte communications and due process, require the disclosure of any information garnered outside of the public hearing process in order to ensure that the "public's business is conducted in public."

**Instructions**

- This form is intended to help you make full disclosure of ex parte communications that occur prior to or during a public meeting for matters which come before the Planning Commission for discretionary action.
- The form must be completed as soon as possible after the ex parte contact occurred and shall include a full and complete description of the communication.
- Please fill out a separate form for each communication (telephone conversation, e-mail, in-person meeting, site visit or other contact).
- A copy of this disclosure form, along with copies of any e-mails or written correspondence that do not indicate that they were also sent to the Planning Commission Secretary, must be submitted prior to the beginning of the public meeting. Failure to do so could result in an action by the Planning Commission.
- If you receive a request for contact, but decline or do not reply, you need not disclose this information.

Commissioner's Name \_\_\_\_\_

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

Project Address \_\_\_\_\_

Name of Person(s) Involved in Communication \_\_\_\_\_

Date of Contact \_\_\_\_\_ Type/Location of Contact \_\_\_\_\_

Contact initiated by: ☐ Applicant ☐ Member of the public ☐ Planning Commissioner

Item/issues discussed in meeting/evidence received (attach additional sheets if necessary)

---

**FOR THE USE OF THE PLANNING COMMISSION SECRETARY**

Received by \_\_\_\_\_  
Date of action \_\_\_\_\_

Date received \_\_\_\_\_  
Item Agenda No. \_\_\_\_\_

Last revised: September 8, 2014



## APPENDIX 6: MISSION & VISION STATEMENT AND CITY FACTS

---

### MISSION STATEMENT

“To deliver efficient public services in partnership with our community which ensures public safety, a prosperous economic environment, opportunities for our youth, and a high quality of life for residents,”

### VISION STATEMENT

The City’s vision sets the focus for the future. The vision is a statement that describes the ideal future of an organization, or what the organization would ideally like to be. The dynamic center of Orange County which is acclaimed for our:

- Investment in youth
- Neighborhood pride
- Enriched and diverse culture
- Safe and healthy community
- Thriving economic climate
- Quality government services

---



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### CITY FACTS

<b>CITY INCORPORATED:</b>	June 1, 1886.
<b>CITY CHARTER:</b>	Adopted 952.
<b>FISCAL BUDGET:</b>	<a href="http://www.santa-ana.org/finance/budget/default.asp">http://www.santa-ana.org/finance/budget/default.asp</a>
<b>FIVE YEAR STRATEGIC PLAN:</b>	<a href="http://www.santa-ana.org/strategic-planning/">http://www.santa-ana.org/strategic-planning/</a>
<b>POPULATION:</b>	335,264
<b>ETHNICITY:</b>	Hispanic: 253,928 (78.2%) Asian: 33,618 (10.4%) White: 29,950 (9.2%) Black: 3,177 (1.0%)
<b>MEDIAN AGE:</b>	29.1
<b>AREA:</b>	27.3 square miles
<b>SIZE:</b>	County Seat, second largest city in Orange County and eleventh largest in California.
<b>CITY TREE:</b>	Jacaranda
<b>CITY FLOWER:</b>	Hibiscus
<b>CITY COLORS:</b>	Royal Blue & Gold
<b>CITY MOTTOES:</b>	“Education First” “Downtown Orange County” and “The Golden City”



## OPEN & PUBLIC IV:

*A Guide to the Ralph M. Brown Act*

— 2ND EDITION, REVISED JULY 2010 —





**OPEN & PUBLIC IV:**  
***A Guide to the Ralph M. Brown Act***  
**(2<sup>nd</sup> Edition, July 2010)**

**September 2013 Supplement**

This supplement to *OPEN & PUBLIC IV: A Guide to the Ralph M. Brown Act* discusses changes to the law that have taken effect since the publication of the second edition of the guide in 2010. The supplement covers both statutory changes and appellate decisions that affect the Brown Act. For ease of reference, these updates direct the reader to the chapter, subheading and page of the guide's main text. Our objective is to provide the most complete and current resource to assist local agencies in complying with Brown Act requirements. This supplement is to be used in conjunction with the original publication.

This supplement is made available thanks to the hard work and dedication of the Brown Act Committee of the City Attorneys' Department and League Staff:

Michael Jenkins, Brown Act Committee Chair City Attorney, Hermosa Beach, Rolling Hills and West Hollywood Jenkins & Hogen LLP	Heather C. McLaughlin City Attorney, Benicia
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**OPEN & PUBLIC IV:**  
***A Guide to the Ralph M. Brown Act***  
**(2<sup>nd</sup> Edition, July 2010)**

**September 2013 Supplement**

**CHAPTER 3: MEETINGS**

**■ LOCATION OF MEETINGS**

*Page 20 – Add new endnote to the 4<sup>th</sup> bullet point:*

\_\_\_ 94 Ops.Cal.Atty.Gen. 15 (2011) (water district may hold its board meetings at the principal office of the district even if it is located outside the jurisdiction of the district)

**CHAPTER 4: AGENDAS, NOTICES, AND PUBLIC PARTICIPATION**

**■ AGENDAS FOR REGULAR MEETINGS**

*Page 24 – Replace the second paragraph with the following:*

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.” [Gov. Code § 54954.2(a)(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. [78 Ops.Cal.Atty.Gen. 327 (1995).] 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. [88 Ops.Cal.Atty.Gen. 218 (2005).] While posting an agenda on an agency’s Internet Web site 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 Web site if: (1) the local agency has a Web site, 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. [Gov. Code §§ 54954.2(a)(1) and 54954.2(d).]

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

A. The Brown Act does not address this question nor is there any case law on the subject. Public agency attorney opinions vary. Hence, should this situation arise, seek a legal opinion from your agency attorney.

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.” [Gov. Code, § 54954.2(a)(1).] 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. [*San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4<sup>th</sup> 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.)]

#### ■ NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

*Page 25 – Replace the second to the last sentence in the second paragraph, to read:*

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 Web site if: (1) the local agency has a Web site, 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. [Gov. Code §§ 54956(a) and (c).]

*Page 26 – Add the following new heading and paragraphs after “Notice Requirements for Emergency Meetings” to read:*

#### ■ 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 verbally 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. [California Government Code section 54952.3]

No verbal 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.

## ■ NOTICE REQUIREMENTS FOR TAX OR ASSESSMENT MEETINGS AND HEARINGS

*Page 26 – Replace the first paragraph with the following:*

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. [California Government Code Section 54954.6] 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, Cal. Const. Art. XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days' notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

## ■ THE RIGHT TO ATTEND AND OBSERVE MEETINGS

*Page 28 – Add a new paragraph immediately before the Q & A box to read:*

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. [Gov. Code §54953(c)(2)]

*Page 28 – Replace the last paragraph with:*

The legislative body may remove persons from a meeting who willfully interrupt proceedings. [California Government Code section 54957.9] Ejection is justified only when audience members actually disrupt the proceedings. [*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)] 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. [California Government Code section 54957.9]

## CHAPTER 5: CLOSED SESSIONS

### ■ REAL ESTATE NEGOTIATIONS

*Page 37-- Replace the final two sentences on page 37 to read:*

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.

## ■ PUBLIC SECURITY

*Page 41-- Replace the paragraph in this section in its entirety with:*

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>40</sup> Action taken in closed session with respect to such public security issues is not a reportable action.

*Page 43 – Replace endnote 14 with:*

14 California Government Code section 54956.9 (e).

*Page 43 – Replace endnote 16 with:*

*Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 172; see also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for property already subleased to 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).

## CHAPTER 6: REMEDIES

*Page 47 – Add the following new bullet after the bullet title “Invalidation”:*

### ■ 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. [Government Code Section 54960.2(a); Senate Bill No. 1003, Section 4 (2011-2012 Session)] 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.[Government Code Sections 54960.2(a)(1), (2)] The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.[Government Code Section 54960.2(b)] 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. [Government Code Section 54960.2(a)(4)]



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. [Government Code Section 54960.2(c)(2)] The unconditional commitment must be substantially in the form set forth in the Brown Act. [Government Code Section 54960.2(c)(1)] No legal action may thereafter be commenced regarding the past action. [Government Code Section 54960.2(c)(3)] 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. [Government Code Section 54960.2(d)]

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. [Government Code Section 54960.2(e)]



## ACKNOWLEDGEMENTS

The League thanks the following individuals for their work on this update to the original publication:

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## FOREWORD

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

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

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

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

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

### ***To improve the readability of this publication:***

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

Additional copies of this publication may be purchased by visiting CityBooks online at [www.cacities.org/store](http://www.cacities.org/store).

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# CHAPTER 1:

## IT IS THE PEOPLE'S BUSINESS



THE RIGHT OF ACCESS

BROAD COVERAGE

NARROW EXEMPTIONS

PUBLIC PARTICIPATION  
IN MEETINGS

CONTROVERSY

BEYOND THE LAW—GOOD  
BUSINESS PRACTICES

ACHIEVING BALANCE

HISTORICAL NOTE



# CHAPTER 1:

IT IS THE PEOPLE'S BUSINESS



## ■ THE RIGHT OF ACCESS

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

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

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

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

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

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

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

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

### **Practice Tip:**

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

## ■ BROAD COVERAGE

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

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

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

## ■ NARROW EXEMPTIONS

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

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

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

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

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

### **Practice Tip:**

Think of the government's house as being made of glass. The curtains may be drawn only to further the public's interest.





## ■ PUBLIC PARTICIPATION IN MEETINGS

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



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

## ■ CONTROVERSY

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

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

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

## ■ BEYOND THE LAW—GOOD BUSINESS PRACTICES

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

The Brown Act allows a legislative body to adopt practices and requirements for greater access to meetings for itself and its subordinate committees and bodies that are more stringent than the law itself requires.<sup>4</sup> Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act doesn't provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

### **Practice Tip:**

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

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

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

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

### ■ ACHIEVING BALANCE

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

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

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

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

### ■ HISTORICAL NOTE

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

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

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

#### **Practice Tip:**

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





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

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**Endnotes**

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

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## CHAPTER 2:

### LEGISLATIVE BODIES



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

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

## CHAPTER 2:

### LEGISLATIVE BODIES



The Brown Act applies to the legislative bodies of local agencies. It defines “legislative body” broadly to include just about every type of decision-making body of a local agency.<sup>1</sup>

#### ■ WHAT IS A “LEGISLATIVE BODY” OF A LOCAL AGENCY?

A “legislative body” includes:

- **The “governing body”** of a local agency or any other local body created by state or federal statute.<sup>2</sup> This includes city councils, boards of supervisors, school boards and boards of trustees of special districts. A “local agency” is any city, county, school district, municipal corporation, redevelopment agency, district, political subdivision, or other public agency.<sup>3</sup> A housing authority is a local agency under the Brown Act even though it is created by and is an agent of the state.<sup>4</sup> The California Attorney General has opined that air pollution control districts and regional open space districts are also covered.<sup>5</sup> Entities created pursuant to joint powers agreements are local agencies within the meaning of the Brown Act.<sup>6</sup>
- **Newly-elected members** of a legislative body who have not yet assumed office must conform to the requirements of the Brown Act as if already in office.<sup>7</sup> Thus, meetings between incumbents and newly-elected members of a legislative body, such as a meeting between two outgoing members and a member-elect of a five-member body, could violate the Brown Act.

#### **Practice Tip:**

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

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

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

- **Appointed bodies**—whether permanent or temporary, decision-making or advisory—including planning commissions, civil service commissions and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and “blue ribbon committees” created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information, they would have been exempt from the Brown Act.<sup>8</sup>
- **Standing committees** of a legislative body, irrespective of their composition, which have either: (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if comprised of less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates long-term committees on budget and finance or on public safety, those are standing committees subject to the Brown Act. Further, function over form controls. For example, a statement by the legislative body that “the advisory committee shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup>
- The governing body of any **private organization** either: (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>12</sup> These include some nonprofit corporations created by local agencies.<sup>13</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>14</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>15</sup>

#### **Practice Tip:**

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

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

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

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

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



- **Certain kinds of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises “material authority” delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>16</sup>

#### ■ WHAT IS NOT A “LEGISLATIVE BODY” FOR PURPOSES OF THE BROWN ACT?

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

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

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

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

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

- Individual decision makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads are not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>20</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>21</sup>

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#### Endnotes

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 2 California Government Code section 54952(a)
- 3 California Government Code section 54951. *But see:* Education Code section 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners* (1979) 89 Cal.App.3d 545
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990)
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354
- 7 California Government Code section 54952.1
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799
- 9 California Government Code section 54952(b)
- 10 79 Ops. Cal.Atty.Gen. 69 (1996)
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781
- 12 California Government Code section 54952(c)(1)(B). The same rule applies to a full voting member appointed prior to February 9, 1996 who, after that date, is made a non-voting board member by the legislative body. California Government Code section 54952(c)(2)
- 13 California Government Code section 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862; *see also:* 81 Ops.Cal.Atty.Gen. 281 (1998); 85 Ops.Cal.Atty.Gen. 55
- 14 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal* (1999) 69 Cal.App.4th 287, 300 fn. 5
- 15 "The Brown Act," California Attorney General (2003), p. 7
- 16 California Government Code section 54952(d)
- 17 California Government Code section 54952(b); *see also: Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821
- 18 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123
- 19 56 Ops.Cal.Atty.Gen. 14 (1973)
- 20 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870
- 21 59 Ops.Cal.Atty.Gen. 162 (1976)

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# CHAPTER 3:

## MEETINGS



BROWN ACT MEETINGS

SIX EXCEPTIONS TO THE MEETING  
DEFINITION

COLLECTIVE BRIEFINGS

RETREATS OR WORKSHOPS OF  
LEGISLATIVE BODIES

SERIAL MEETINGS

INFORMAL GATHERINGS

TECHNOLOGICAL CONFERENCING

LOCATION OF MEETINGS



## CHAPTER 3:

### MEETINGS



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

#### ■ BROWN ACT MEETINGS

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

- "Regular meetings" are meetings occurring at the dates, times, and location set by resolution, ordinance, or other formal action by the legislative body and are subject to 72-hour posting requirements.<sup>2</sup>
- "Special meetings" are meetings called by the presiding officer or majority of the legislative body to discuss only discrete items on the agenda under the Brown Act's notice requirements for special meetings.<sup>3</sup>
- "Emergency meetings" are a limited class of meetings held when prompt action is needed due to actual or threatened disruption of public facilities and are held on little notice.<sup>4</sup>
- "Adjourned meetings" are regular or special meetings that have been adjourned or re-adjourned to a time and place specified in the order of adjournment, with no agenda required for regular meetings adjourned for less than five calendar days as long as no additional business is transacted.<sup>5</sup>

#### ■ SIX EXCEPTIONS TO THE MEETING DEFINITION

The Brown Act creates six exceptions to the meeting definition: <sup>6</sup>

##### *Individual Contacts*

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

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

### ***Conferences***

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

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



### ***Community Meetings***

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

"I see we have four distinguished members of the city council at our meeting tonight," said the chair of the Environmental Action Coalition.

"I wonder if they have anything to say about the controversy over enacting a slow growth ordinance?"

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

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for re-election and all three participate. All of the candidates are asked their views of a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates.



### ***Other Legislative Bodies***

The fourth exception allows a majority of a legislative body to attend an open and publicized meeting of: (1) another body of the local agency and (2) a legislative body of another local agency.<sup>7</sup> Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their local agency's subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

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

- Q.** The entire legislative body intends to testify against a bill before the Senate Local Government Committee in Sacramento. Must this activity be noticed as a meeting of the body?
- A.** *No, because the members are attending and participating in an open meeting of another governmental body which the public may attend.*
- Q.** The members then proceed upstairs to the office of their local Assembly member to discuss issues of local interest. Must this session be noticed as a meeting and be open to the public?
- A.** *Yes, because the entire body may not meet behind closed doors except for proper closed sessions. The same answer applies to a private lunch or dinner with the Assembly member.*

### ***Standing Committees***

The fifth exception authorizes the attendance of a majority at an open and noticed meeting of a standing committee of the legislative body, provided that the legislative body members who are not members of the standing committee attend only as observers (meaning that they cannot speak or otherwise participate in the meeting).<sup>8</sup>

- Q.** The legislative body establishes a standing committee of two of its five members, which meets monthly. A third member of the legislative body wants to attend these meetings and participate. May she?
- A.** *She may attend, but only as an observer; she may not participate.*

### ***Social or Ceremonial Events***

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

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



### ■ COLLECTIVE BRIEFINGS

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

### ■ RETREATS OR WORKSHOPS OF LEGISLATIVE BODIES

There is consensus among local agency attorneys that gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, or workshops are covered under the Brown Act. This is the case whether the retreat, study session, or workshop focuses on long-range agency planning, discussion of critical local issues, or on team building and group dynamics.<sup>9</sup>

- Q.** The legislative body wants to hold a team-building session to improve relations among its members. May such a session be conducted behind closed doors?
- A.** *No, this is not a proper subject for a closed session, and there is no other basis to exclude the public. Council relations are a matter of public business.*

### ■ SERIAL MEETINGS

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings involve only a portion of a legislative body, but eventually involve a majority.

The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful participation in legislative body decision-making. The Brown Act provides that "[a] majority of the members of a legislative body shall not, outside a meeting...use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."<sup>10</sup>

The serial meeting may occur by either a "daisy-chain" or a "hub-and-spoke" sequence. In the daisy-chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D and so on, until a quorum has discussed, deliberated or taken action on an item within the legislative body's subject matter jurisdiction. The hub-and-spoke process involves, for example, a staff member (the hub) communicating with members of a legislative body (the spokes) one-by-one for a decision on a proposed action,<sup>11</sup> or a chief executive officer briefing a majority of redevelopment agency members prior to a formal meeting and, in the process, information about the members' respective views is revealed. Each of these scenarios violates the Brown Act.

A legislative body member has the right, if not the duty, to meet with constituents to address their concerns. That member also has the right to confer with a colleague or appropriate staff about local agency business. An employee or official of a local agency may engage in separate conversations or communications outside of an open and noticed meeting "with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body."<sup>12</sup>

The Brown Act has been violated however, if several one-on-one meetings or conferences leads to a discussion, deliberation or action by a majority. In one case, a violation occurred when a quorum of a city council directed staff by letter on an eminent domain action.<sup>13</sup>



**Practice Tip:**

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

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

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

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

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

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

*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."<sup>16</sup> Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation or action taken among the majority of the legislative body.*

"Thanks for the information," said Council Member Kim. "These zoning changes can be tricky, and now I think I'm better equipped to make the right decision."

"Glad to be of assistance," replied the planning director. "Any idea what the other council members think of the problem?"

*The planning director should not ask, and the member should not answer. A one-on-one meeting that involves communicating the comments or position of other members violates the Brown Act.*

- Q.** The agency's Web site includes a chat room where agency employees and officials participate anonymously and often discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate or take action on matters of agency business.
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** No, the Brown Act expressly allows this kind of communication, though the members should avoid discussing the merits of what is to be taken up at the meeting.

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

### ■ INFORMAL GATHERINGS

Often members are tempted to mix business with pleasure—for example, by holding a post meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>17</sup> A luncheon gathering in a crowded dining room violates the Brown Act if the public does not have an adequate opportunity to hear or participate in the deliberations of members.

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

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

- Q.** The agency has won a major victory in the Supreme Court on an issue of importance. The presiding officer decides to hold an impromptu press conference in order to make a statement to the print and broadcast media. All the other members show up in order to make statements of their own and be seen by the media. Is this gathering illegal?
- A.** *Technically there is no exception for this sort of gathering, but as long as members do not state their intentions as to future action to be taken and the press conference is open to the public, it seems harmless.*

### ■ TECHNOLOGICAL CONFERENCING

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

“Teleconference” is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”<sup>19</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following specific requirements:<sup>20</sup>

- Teleconferencing may be used for all purposes during any meeting;
- At least a quorum of the legislative body must participate from locations within the local agency’s jurisdiction;
- Additional teleconference locations may be made available for the public;





**Practice Tip:**

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

- Each teleconference location must be specifically identified in the notice and agenda of the meeting, including a full address and room number, as may be applicable;
- Agendas must be posted at each teleconference location, even if a hotel room or a residence;
- Each teleconference location must be accessible to the public and have technology, such as a speakerphone, to enable the public to participate;
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location; and
- All votes must be by roll call.

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

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

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

#### ■ LOCATION OF MEETINGS

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>21</sup>

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

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

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

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

- Participate in multiagency meetings or discussions, however, such meetings must be held within the boundaries of one of the participating agencies, and all involved agencies must give proper notice;
- Meet in the closest meeting facility if the local agency has no meeting facility within its boundaries or at its principal office if that office is located outside the territory over which the agency has jurisdiction;

- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction;
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility, or
- Visit the office of its legal counsel for a closed session on pending litigation, when to do so would reduce legal fees or costs.<sup>22</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.<sup>23</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>24</sup>

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>25</sup>



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**Endnotes:**

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

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# CHAPTER 4:

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



AGENDAS FOR REGULAR MEETINGS

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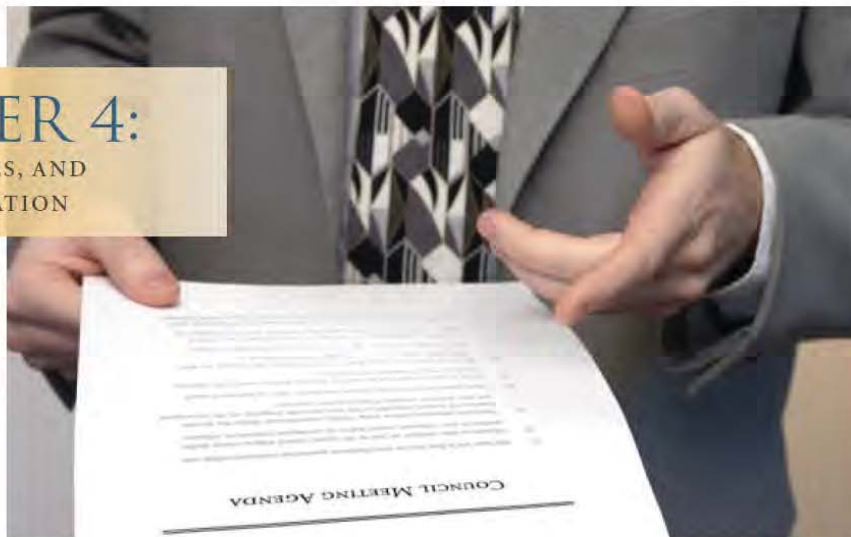
THE RIGHT TO ATTEND MEETINGS

RECORDS AND RECORDINGS

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## CHAPTER 4:

### AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

#### ■ AGENDAS FOR REGULAR MEETINGS

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this provision to require posting in locations accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> Posting may also be made on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> However, only posting an agenda on an agency’s Web site is inadequate since there is no universal access to the internet. The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”<sup>4</sup>

#### **Practice Tip:**

Putting together a meeting agenda requires careful thought.

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

- “Consideration of a report regarding traffic on Eighth Street”
- “Consideration of contract with ABC Consulting”

Are these descriptions adequate?

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



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

Is this permissible?

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

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

#### ■ MAILED AGENDA UPON WRITTEN REQUEST

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

A request for notice is valid for one calendar year and renewal requests must be filed Jan. 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>5</sup>



#### ■ NOTICE REQUIREMENTS FOR SPECIAL MEETINGS

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

The notice must state the time and place of the meeting, as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda—with a brief general description. As noted above, closed session items should be described in accordance with the Brown Act’s safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements. The special meeting notice must also be posted at least 24 hours prior to the special meeting in a site freely accessible to the public. The body cannot consider business not in the notice.<sup>6</sup>

#### ■ NOTICES AND AGENDAS FOR ADJOURNED AND CONTINUED MEETINGS AND HEARINGS

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>7</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting, if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.<sup>8</sup> A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.



A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>9</sup>

#### ■ NOTICE REQUIREMENTS FOR EMERGENCY MEETINGS

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>10</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

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

#### ■ EDUCATIONAL AGENCY MEETINGS

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

#### ■ NOTICE REQUIREMENTS FOR TAX OR ASSESSMENT MEETINGS AND HEARINGS

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased general tax or assessment.<sup>14</sup> At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which public testimony may be given before the legislative body proposes to act on the tax or assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.<sup>15</sup>

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>16</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

#### ■ NON-AGENDA ITEMS

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:<sup>17</sup>

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

#### **Practice Tip:**

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



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

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

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

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

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

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

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

## ■ RESPONDING TO THE PUBLIC

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to "briefly respond" to comments or questions from members of the public; provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body's rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on his or her own activities.<sup>16</sup> However, caution should be used to avoid any discussion or action on such items.

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

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

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



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

## ■ THE RIGHT TO ATTEND AND OBSERVE MEETINGS

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



Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>19</sup>

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>20</sup> This does not mean however that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>21</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>22</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>23</sup>

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

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

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

The legislative body may remove persons from a meeting who willfully interrupt proceedings. If order still cannot be restored, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to re-admit an individual or individuals not responsible for the disturbance.<sup>25</sup>

## ■ RECORDS AND RECORDINGS

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.<sup>26</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>27</sup>

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

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

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

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

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose; and the agendas for all meetings of the legislative body must include the address of this office or location.<sup>28</sup> A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body; or
- After the meeting if prepared by some other person.<sup>29</sup>

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>30</sup> The agency may impose its ordinary charge for copies.<sup>31</sup>

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.<sup>32</sup>

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.<sup>33</sup>



## ■ 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.<sup>34</sup>

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

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

### **Practice Tip:**

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

Moreover, the legislative body cannot prohibit public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself. But, the Brown Act provides no immunity for defamatory statements.<sup>35</sup>

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

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

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

**A** There is no case law on this subject. Some would argue that 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.<sup>36</sup>

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a public meeting, if all interested members of the public had the opportunity to speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>37</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.<sup>38</sup>

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#### Endnotes

- 1 California Government Code section 54954.2(a)(1)
- 2 78 Ops.Cal.Atty.Gen. 327 (1995)
- 3 88 Ops.Cal.Atty.Gen. 218 (2005)
- 4 California Government Code section 54954.2(a)(1)
- 5 California Government Code section 54954.1
- 6 California Government Code section 54956
- 7 California Government Code section 54955
- 8 California Government Code section 54954.2(b)(3)
- 9 California Government Code section 54955.1
- 10 California Government Code section 54956.5
- 11 Education Code sections 35144, 35145 and 72129
- 12 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196
- 13 California Education Code section 35145.5
- 14 California Government Code section 54954.6
- 15 California Government Code section 54954.6(g)
- 16 See: Cal.Const.Art.XIIIC, XIIID and California Government Code section 54954.6(h)
- 17 California Government Code section 54954.2(b)
- 18 California Government Code section 54954.2(a)(2)
- 19 California Government Code section 54953.3
- 20 California Government Code section 54961(a); California Government Code section 11135(a)
- 21 California Government Code section 54952.2(c)(2)
- 22 California Government Code section 54953(b)
- 23 California Government Code section 54953(c)
- 24 46 Ops.Cal.Atty.Gen. 34 (1965)
- 25 California Government Code section 54957.9
- 26 California Government Code section 54957.5
- 27 California Government Code section 54957.5(d)
- 28 California Government Code section 54957.5(b)
- 29 California Government Code section 54957.5(c)
- 30 California Government Code section 54953.5(b)
- 31 California Government Code section 54957.5(d)
- 32 California Government Code section 54953.5(a)
- 33 California Government Code section 54953.6
- 34 California Government Code section 54954.3(a)
- 35 California Government Code section 54954.3(c)
- 36 California Government Code section 54954.3(b); *Chaffee v. San Francisco Public Library Com.* (2005) 134 Cal. App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)
- 37 California Government Code section 54954.3(a)
- 38 California Government Code section 54954.3(a)

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# CHAPTER 5:

## CLOSED SESSIONS



AGENDAS AND REPORTS

LITIGATION

REAL ESTATE NEGOTIATIONS

PUBLIC EMPLOYMENT

LABOR NEGOTIATIONS

LABOR NEGOTIATIONS—SCHOOL AND  
COMMUNITY COLLEGE DISTRICTS

OTHER EDUCATION CODE EXCEPTIONS

GRAND JURY TESTIMONY

LICENSE APPLICANTS WITH CRIMINAL RECORDS

PUBLIC SECURITY

MULTIJURISDICTIONAL DRUG LAW  
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HOSPITAL PEER REVIEW AND TRADE SECRETS

THE CONFIDENTIALITY OF CLOSED SESSION  
DISCUSSIONS



## CHAPTER 5:

### CLOSED SESSIONS



#### **Practice Tip:**

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

The Brown Act begins with a strong statement in favor of open meetings; private discussions among a majority of a legislative body are prohibited, unless expressly authorized under the Brown Act. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter must be discussed in public. As an example, a board of police commissioners cannot generally meet in closed session, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>1</sup>

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session. Individuals who do not have an official role in advising the legislative body on closed session subject matters must be excluded from closed session discussions.<sup>2</sup>

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

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

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

In this chapter, the grounds for convening a closed session are called “exceptions” because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. In these cases, it is not proper to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

## ■ AGENDAS AND REPORTS

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

The Brown Act supplies a series of fill-in-the-blank sample agenda descriptions for various types of authorized closed sessions, which provide a “safe harbor” from legal attacks. These sample agenda descriptions cover license and permit determinations, real property negotiations, existing or anticipated litigation, liability claims, threats to security, public employee appointments, evaluations and discipline, labor negotiations, multi-jurisdictional drug cases, hospital boards of directors, and medical quality assurance committees.<sup>3</sup>

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

The Brown Act does not require minutes, including minutes of closed session. A confidential “minute book” may be kept to record actions taken at closed sessions.<sup>7</sup> If one is kept, it must be made available to members of the legislative body, provided that the member asking to review minutes of a particular meeting was not disqualified from attending the meeting due to a conflict of interest.<sup>8</sup> A court may order the disclosure of minute books for the court’s review if a lawsuit makes sufficient claims of an open meeting violation.

### ***Practice Tip:***

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

### ***Practice Tip:***

Pay close attention to closed session agenda descriptions. Using the wrong label can lead to invalidation of an action taken in closed session.

## ■ LITIGATION

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

The Brown Act expressly authorizes closed sessions to discuss what is considered litigation. The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. The essential thing to know is that a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is a party.<sup>10</sup> The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body's conferring with its own legal counsel. For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body and an adverse party or to hold a closed session for the purpose of participation in a mediation.<sup>11</sup>

The California Attorney General believes that if the agency's attorney is not a participant, a litigation closed session cannot be held.<sup>12</sup> In any event, local agency officials should always consult the agency's attorney before placing this type of closed session on the agenda, in order to be certain that it is being done properly.

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

### *Existing litigation*

- Q.** May the legislative body agree to settle a lawsuit in a properly-noticed closed session, without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*

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

Grounds for convening a closed session in this chapter are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions apply to an issue or information the legislative body wishes to discuss privately. It is improper in these cases, to convene a closed session, even to protect confidential information. For example, the Brown Act does not authorize closed sessions for general contract negotiations.

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or to consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation that requires actions that are subject to public hearings cannot be approved in closed session.<sup>13</sup>



### ***Threatened litigation against the local agency***

Closed sessions are authorized for legal counsel to inform the legislative body of specific facts and circumstances that suggest that the local agency has significant exposure to litigation. The Brown Act lists six separate categories of such facts and circumstances.<sup>14</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff.

### ***Initiation of litigation by the local agency***

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

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

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



## **■ REAL ESTATE NEGOTIATIONS**

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.<sup>15</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>16</sup>

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

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

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiator, the real property that the negotiations may concern and the names of the persons with whom its negotiator may negotiate.<sup>17</sup>

After real estate negotiations are concluded, the approval and substance of the agreement must be reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval as soon as informed of it. Once final, the substance of the agreement must be disclosed to anyone who inquires.





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

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

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

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

### ■ PUBLIC EMPLOYMENT

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee."<sup>18</sup> The purpose of this exception—commonly referred to as the "personnel exception"—is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>19</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>20</sup> That authority may be delegated to a subsidiary appointed body.<sup>21</sup>

An employee must be given at least 24 hours notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the legislative body is reviewing evidence, which could include live testimony and adjudicating conflicting testimony offered as evidence. The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>22</sup> If the employee is not given notice, any disciplinary action is null and void.<sup>23</sup>

#### **Practice Tip:**

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

- Q.** Must 24 hours notice be given to an employee whose negative performance evaluation is to be considered by the legislative body in closed session?
- A.** No, the notice is reserved for situations where the body is to hear complaints and charges from witnesses.

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>24</sup>

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>25</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>26</sup> 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.<sup>27</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>28</sup>

“I have some important news to announce,” said Mayor Garcia. “We’ve decided to terminate the contract of the city manager, effective immediately. The council has met in closed session and we’ve negotiated six months severance pay.”

“Unfortunately, that has some serious budget consequences, so we’ve had to delay phase two of the East Area Project.”

*This may be an improper use of the personnel closed session if the council agenda described the item as the city manager’s evaluation. In addition, other than labor negotiations, any action on individual compensation must be taken in open session. Caution should be exercised to not discuss in closed session issues, such as budget impacts in this hypothetical, beyond the scope of the posted closed session notice.*

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

**Practice Tip:**

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

**Practice Tip:**

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

## ■ LABOR NEGOTIATIONS

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>28</sup> on employee salaries and fringe benefits for both union and non-union employees. For represented employees, it may also consider working conditions that by law require negotiation. These sessions may take place before or during negotiations with employee representatives. Prior to the closed session, the legislative body must hold an open and public session in which it identifies its designated representatives.

During its discussions with representatives on salaries and fringe benefits, the legislative body may also discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>29</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>31</sup> The labor sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees. For purposes of this prohibition, an "employee" includes an officer or an independent contractor who functions as an officer or an employee. Independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.

## ■ LABOR NEGOTIATIONS—SCHOOL AND COMMUNITY COLLEGE DISTRICTS

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

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

- (1) A negotiating session with a recognized or certified employee organization;
- (2) A meeting of a mediator with either side;
- (3) A hearing or meeting held by a fact finder or arbitrator; and
- (4) A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>32</sup>



Public participation under the Rodda Act also takes another form.<sup>33</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>34</sup> The final vote must be in public.



## ■ OTHER EDUCATION CODE EXCEPTIONS

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student, if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.<sup>35</sup>

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>36</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>37</sup>

## ■ GRAND JURY TESTIMONY

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

## ■ LICENSE APPLICANTS WITH CRIMINAL RECORDS

A closed session is permitted when an applicant, who has a criminal record, applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw, the body must deny the license in public, immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>39</sup>

## ■ PUBLIC SECURITY

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings, essential public services, including water, sewer, gas, or electric service, or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials including the Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>40</sup> Action taken in closed session with respect to such public security issues is not reportable action.

## ■ MULTIJURISDICTIONAL DRUG LAW ENFORCEMENT AGENCY

A joint powers agency formed to provide drug law enforcement services to multiple jurisdictions may hold closed sessions to discuss case records of an on-going criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>41</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>42</sup>

### ***Practice Tip:***

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

## ■ HOSPITAL PEER REVIEW AND TRADE SECRETS

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals, under other provisions of law.<sup>43</sup>

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

A "trade secret" is defined as information 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.<sup>44</sup>

## ■ THE CONFIDENTIALITY OF CLOSED SESSION DISCUSSIONS

It is not uncommon for agency officials to complain that confidential information is being leaked from closed sessions. The Brown Act prohibits the disclosure of confidential information acquired in a closed session by any person present and offers various remedies to address willful breaches of confidentiality.<sup>45</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>46</sup> 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.<sup>47</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long believed that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is "improper" for officials to disclose information received during a closed session regarding pending litigation,<sup>48</sup> though the Attorney General has also concluded that a local agency may not go so far as to adopt an ordinance criminalizing public disclosure of closed session discussions.<sup>49</sup> In any event, the Brown Act now prescribes remedies for breaches of confidentiality. These include injunctive relief, disciplinary action against an employee, and referral of a member of the legislative body to the grand jury.<sup>50</sup>

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

### **Practice Tip:**

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

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

"I want the press to know that I voted in closed session against filing the eminent domain action," said Council Member Chang.

"Don't settle too soon," reveals Council Member Watson to the property owner, over coffee. "The city's offer coming your way is not our bottom line."

*The first comment to the press is appropriate—the Brown Act requires that certain final votes taken in closed session be reported publicly.<sup>52</sup> The second comment to the property owner is not—disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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#### Endnotes

- 1 61 Ops.Cal.Atty.Gen. 220 (1978)
- 2 82 Ops.Cal.Atty.Gen. 29 (1999)
- 3 California Government Code section 54954.5
- 4 California Government Code sections 54956.9 and 54957.7
- 5 California Government Code section 54957.1(a)
- 6 California Government Code section 54957.1(b)
- 7 California Government Code section 54957.2
- 8 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal.Code Regs. section 18702.1(c)
- 9 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363
- 10 California Government Code section 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 11 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471
- 12 "The Brown Act," California Attorney General (2003), p. 40
- 13 *Trancas Property Owners Association v. City of Malibu* (2006) 138 Cal.App.4th 172
- 14 Government Code section 54956.9(b)
- 15 California Government Code section 54956.8
- 16 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 172; see also \_\_\_ Ops.Cal.Atty.Gen. \_\_\_ (May 21, 2010) (2010 WL 2150433) (concluding it is impermissible for a redevelopment agency to meet in closed session to discuss the terms of a rehabilitation loan to a business that was leasing property from the agency when the terms and conditions of the lease itself were not also a matter of discussion.)
- 17 California Government Code section 54956.8
- 18 California Government Code section 54957(b)
- 19 63 Ops.Cal.Atty.Gen. 215 (1980); but see: *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session).
- 20 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002)
- 21 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.
- 22 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860
- 23 California Government Code section 54957
- 24 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87
- 25 *Moreno v. City of King* (2005) 127 Cal.App.4th 17
- 26 California Government Code section 54957
- 27 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165
- 28 California Government Code section 54957.1(a)(5)

- 29 California Government Code section 54957.6  
30 57 Ops.Cal.Atty.Gen. 209 (1974)  
31 California Government Code section 54957.1(a)(6)  
32 California Government Code section 3549.1  
33 California Government Code section 3540  
34 California Government Code section 3547  
35 California Education Code section 48918, but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings.)  
36 California Education Code section 72122  
37 California Education Code section 60617  
38 California Government Code section 54953.1  
39 California Government Code section 54956.7  
40 California Government Code section 54957  
41 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354  
42 California Government Code section 54957.8  
43 California Government Code section 54962  
44 California Health and Safety Code section 32106  
45 Government Code section 54963  
46 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327; see also: California Government Code section 54963  
47 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363  
48 80 Ops.Cal.Atty.Gen. 231 (1997)  
49 76 Ops.Cal.Atty.Gen. 289 (1993)  
50 California Government Code section 54963  
51 California Government Code section 54963  
52 California Government Code section 54957.1

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



# CHAPTER 6:

## REMEDIES



INVALIDATION

CIVIL ACTION TO PREVENT  
FUTURE VIOLATIONS

COSTS AND ATTORNEY'S FEES

CRIMINAL COMPLAINTS

VOLUNTARY RESOLUTION



## CHAPTER 6:

### REMEDIES



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

#### ■ INVALIDATION

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

- Those taken in substantial compliance with the law;
- Those involving the sale or issuance of notes, bonds or other indebtedness, or any related contracts or agreements;
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment;
- Those connected with the collection of any tax; or
- Those in which the complaining party had actual notice at least 72 hours prior to the meeting at which the action is taken.

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action, the nature of the claimed violation, and the "cure" sought. This demand must be sent within 90 days of the alleged violation or 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that only properly agendized items are acted on by the governing body during a meeting.<sup>2</sup> The legislative body then has up to 30 days to cure and correct its action. If it does not act, any lawsuit must be filed within the next 15 days.

The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and to weigh its options before litigation is filed. The Brown Act does not specify how to cure or correct a violation; the best method is to rescind the action being complained of and to start over.

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

#### ■ CIVIL ACTION TO PREVENT FUTURE VIOLATIONS

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

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

It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future where the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>6</sup> Note, however, that a court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>7</sup>

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

#### ■ COSTS AND ATTORNEY'S FEES

Someone who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>8</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorneys fees will be awarded against the agency if a violation of the Act is proven.

An attorney fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>9</sup>

#### ■ 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.<sup>10</sup>

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.<sup>11</sup>

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

#### **Practice Tip:**

A lawsuit to invalidate must be preceded by a demand to cure and correct the challenged action in order to give the legislative body an opportunity to consider its options.



#### **Practice Tip:**

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

#### **Practice Tip:**

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

majority of the legislative body to make a positive or negative decision.<sup>12</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>13</sup> In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act—not whether that member has voted with the majority or minority, or has voted at all.

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.<sup>14</sup>

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

#### **■ VOLUNTARY RESOLUTION**

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

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

#### **Endnotes**

- 1 California Government Code section 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision); sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions); 54954.6 (tax hearings); and 54956 (special meetings). Violations of sections not listed above cannot give rise to invalidation actions, but are subject to the other remedies listed in section 54960.1.
- 2 California Government Code section 54960.1 (b) and (c)(1)
- 3 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310
- 4 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 571
- 5 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1117-18
- 6 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524. *Accord Shapiro v. San Diego City Council* (2002) 96 Cal. App. 4th 904, 916 & fn.6
- 7 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36
- 8 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal.App.4th 1313, 1324-27 and cases cited therein.
- 9 California Government Code section 54960.5
- 10 California Government Code section 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both. California Penal Code section 19. Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 11 California Government Code section 54959
- 12 California Government Code section 54952.6
- 13 61 Ops.Cal.Atty.Gen.283 (1978)
- 14 California Government Code section 54959

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



## DISCLAIMER

The material in this handbook and resource guide is intended to provide general information. The Clerk of the Council Office deems the contents presented herein to be correct as of the publication date. However, the reader is advised that the various provisions relating to City boards and commissions are subject to change by the City Council and/or other enabling authorities.

For questions please call the Clerk of the Council Office at (714) 647-6520.

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