

# CITY OF OCEANSIDE

2024

## BOARDS AND COMMISSIONS

## MEMBER HANDBOOK

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# **City of Oceanside Boards & Commissions Member Handbook**

## **ABOUT CITY ADVISORY GROUPS**

### **Background**

The City of Oceanside has a long tradition of citizens volunteering to serve their community. At the turn of the 20<sup>th</sup> century, the Board of Trustees (the City Council at that time) relied on citizen volunteers to support a wide range of activities. Examples of early volunteer efforts include assisting with surveying work for a new coast road, providing fire protection services, and making recommendations regarding the City wharf. In 1904 the Board of Trustees appointed the first group of citizens to serve on the Library Board of Trustees, which continues to serve the community to this day, nearly one hundred twenty years later. Citizens have also been serving on the Planning Commission for nearly a century since the appointment of the first commissioners in 1928 – proof of the longstanding tradition of citizen service in the City of Oceanside.

Today over 125 volunteers serve on more than a dozen advisory groups offering advice and recommendations on policies and programs relating to areas such as housing, public safety, historic preservation, and many others. Citizens serving on these bodies devote hours to attending meetings and reviewing materials in order to make sound recommendations to the City's elected officials and staff. These citizens perform an invaluable service, contributing their time and expertise and giving input regarding policies and programs affecting the City, the Downtown Area, and the Small Craft Harbor District.

### **Who are Advisory Group Members?**

Members of Oceanside advisory groups are persons of all ages who represent a variety of interests and backgrounds. While education and expertise in a particular area of interest may be considered for some appointments, they are not mandatory. Many members are simply hard-working and conscientious residents dedicated to serving their community. Members of City advisory groups have an opportunity to make decisions for recommendations to the City Council on a variety of programs and services that impact Oceanside residents citywide. They become well-informed about issues and areas of concern before considering courses of action and appropriate recommendations, gaining a better understanding of the impacts that City policies and services have on their fellow citizens. The best application of this work combines a sound professional viewpoint of an issue with a true citizen's perspective to create the

ideal representation for Oceanside. (Note: The terms “advisory group(s)” and “advisory group member(s)” are used throughout this manual in reference to the City’s established commissions, boards, and committees and members appointed by the City Council to advise and offer recommendations on City-related issues and business.)

## **Scope of Responsibility**

The primary responsibility of all members of advisory groups is to serve in an advisory capacity to the elected officials and staff on policies pertaining to services and programs. Members of these bodies serve at the pleasure of the City Council, Community Development Commission or Harbor District Board of Directors. They do not make political decisions or act in any capacity reserved for elected City officials. Members are charged to act on the work plan and specific tasks as defined by the City Council. What is good for the entire community should take precedence over what will increase the advantage of any interest group. In more specific terms, advisory groups may:

- review technical data pertaining to specific areas of concern
- analyze and recommend alternatives for addressing particular courses of action for the City to pursue
- conduct public meetings to encourage citizen participation and input pertaining to areas of concern
- propose specific programs, projects and/or special events
- periodically report to the City Council, Community Development Commission or Small Craft Harbor District Board of Directors to provide information about their activities and accomplishments
- serve as a communication link between the community and elected officials, providing information about programs and services, as well as creating opportunities for citizen input and expression.

## **Communication**

An advisory group serves as an intermediary between elected officials and the public, helping to inform and reconcile opposing viewpoints and build a consensus around common goals and objectives. When an advisory group is unable to reconcile a position, the advisory body should forward its recommendation to the appropriate legislative body (City Council, Community Development Commission or Harbor District Board). The legislative body can then make decisions, being fully aware of all the facts of an issue.

## **Relationships with Elected Officials and Staff**

The City Council, Community Development Commission and Harbor District Board of Directors create all City advisory groups and appoint their members. Through the normal course of business, advisory group members typically request materials from staff in order to get the background information needed to review issues and make their recommendations. Staff responds to these requests and is generally successful at providing information necessary for members to make effective decisions.

While advisory group members can request information from staff, they do not have the authority to direct the City Manager and staff to alter City policies and/or administrative practices. Such authority is empowered with the City Council, Community Development Commission, and the Harbor District Board of Directors. Likewise, members cannot alter or establish formal City policies of any legislative body or change practices. They may make recommendations to elected officials and staff as necessary for the successful operation of their advisory group. Good relations include following the proper channels of communication within the administration.

## **Role of the City Council Liaisons**

The City Council has adopted the following policy regarding the role of City Council liaisons to the City's advisory groups:

Annually in the month of December, the Mayor, with the concurrence of the City Council, assigns Councilmembers to most of the City's advisory groups to serve as a Council liaison. The Liaison is expected to attend all advisory group meetings. The primary role of the Liaison is to serve as a communication link between the City Council and the assigned advisory group. Liaisons inform the City Council of the activities of their assigned advisory group(s) via a standardized section on the City Council agenda where the Liaison reports out on the advisory group activities. Liaisons may, from time to time, carry forward recommendations to the City Council from their assigned advisory group(s) on the advisory group's behalf. However, a commission representative(s) should always be present at the time a recommendation is made to the full Council to ensure that the advisory group's opinions are accurately communicated and to provide an opportunity for dialogue between the City Council and advisory group members. Liaisons also provide information to their assigned advisory group(s) regarding pertinent activities of the City and the City Council. There is a scheduled item entitled "Council Liaison Report" on all of the assigned advisory group agendas." Bear in mind, the Liaisons are **not** members of the advisory groups. They are non-voting adjunct participants of the advisory groups and should not lobby or otherwise influence the decision-making process or orientation of the advisory groups.

## **Relationships between Advisory Group Members**

The success or failure of an advisory group is dependent upon the degree of cooperation among the individual members of the body. In order to build a consensus around common goals and objectives, members have to reconcile opposing viewpoints and show a willingness to objectively define and consider all views when evaluating different issues.

An important way to develop this cooperation is for each advisory group member to ensure that meetings proceed in an orderly manner. The chairperson is primarily responsible for maintaining proper decorum and seeing that consideration of agenda items moves along expeditiously with reasonable time allocated to each item. Each member can assist the chairperson by knowing the basic rules of parliamentary procedure and by adequately preparing for presentations made to the group. A later section of this handbook includes a brief overview of some basic parliamentary terms to give members a better understanding of procedures generally followed by advisory groups in conducting business.

## **Representing the City as an Advisory Group Member**

An individual member of an advisory group must not represent his/her own views on issues before the advisory group to which they belong unless, by majority vote, the group has officially approved such action. A member making a recommendation or expressing a view not approved by a majority vote should indicate he/she is expressing his/her views as a private citizen. Public statements should contain no promises to the public that purport to be binding on an advisory group, staff, City Council, Community Development Commission or Harbor District Board. When making statements to the press, a member should generally indicate that advisory group actions are "recommendations" and that final action will be taken by the City's elected officials. Comments to the press and public should be factual. Individual opinions must be identified as such.

While an advisory group member may disagree with decisions of the City's elected officials, once a decision has been made and a position is taken, a member should do nothing contrary to the adopted policies and programs. If problems arise because of differences between official City policy and personal views that would interfere with continued service, resignation from the advisory group is the appropriate course of action.

Advisory group members are strictly prohibited from taking any actions, or making any representations, agreements, proposals or engaging in any other actions without specific authority from the City of Oceanside. Any such unauthorized actions taken shall not constitute governmental actions under color of authority on behalf of the City of Oceanside. Furthermore, no such actions by advisory group members shall be deemed governmental policy, practice, custom or action attributable to the City of Oceanside, and are therefore not binding on the City or its operations.

# **APPOINTMENTS TO ADVISORY GROUPS**

## **Appointments List**

In accordance with Government Code Section 54972, in December of each year, the City Clerk prepares a Local Appointment List of all ongoing advisory groups which serve at the pleasure of the City Council, Community Development Commission, or the Harbor District Board of Directors. The names of all appointees whose terms will expire during the next calendar year are provided with the dates of their appointments, the dates their terms will expire and the necessary qualifications for each position coming open. This Local Appointment List is available from the City Clerk's Office and the Oceanside Public Libraries. It is also posted on the City's website.

During the year announcements about scheduled and unscheduled vacancies on City Advisory Groups are posted on the City's Website and published in the *San Diego Union Tribune* newspaper.

## **The Application/Appointment Process**

Citizens wishing to apply for a position on an advisory group may obtain an application from the City Clerk's Office or on the City's Website. The City Clerk's Office accepts applications all year round. However, applicants need to complete their forms and return them to the City Clerk's Office by any deadline established for the date scheduled to fill the specific positions for which they are applying. Citizens currently serving on an advisory group and whose terms are about to expire need to complete new applications to receive consideration for reappointment. Applications are kept on file in the City Clerk's Office for one year, at which time the applications are considered expired, and a new application will need to be submitted. Basically, a citizen interested in serving on an advisory group may come in at any time during the year and complete an application for openings that are or may be coming up.

The specific qualifications for the different advisory groups are outlined in the section of this handbook describing each of the advisory groups. The standard requirement for most of these groups is that their members be City residents. Applicants are required to pass a background check by the Police Department before receiving consideration for an appointment. It is the policy of the City of Oceanside that no qualified disabled person will be denied the opportunity to participate as a member of an advisory group. In addition, the City Council strives to seek diversity while making appointments to advisory groups.

All qualified applicants for appointments to the City's advisory groups are submitted by the City Clerk's Office to the Mayor and Council for consideration. Councilmembers may forward their recommendations to the Mayor. The Mayor makes all appointments to advisory groups with the concurrence of the City Council, with the exception of the Planning Commission. The City Council makes Planning Commission appointments after interviewing all of the applicants at a non-televised Council workshop.

Regarding prospective appointments, it is a City policy that no formal recommendation by an advisory group shall be solicited, accepted or considered. However, individual members of these advisory groups may informally suggest appointments to individual Councilmembers. Once appointments have been made, the City Clerk's Office will notify the applicant in writing.

## **Terms of Office**

The terms of office for advisory group members vary from one group to the next. Most members serve two-, three- or four-year terms depending upon the advisory group to which they are appointed. It is a City practice that appointments, to the greatest extent possible, other than reappointments, shall be limited to those individuals not currently serving on an advisory group in order to provide every opportunity possible for those interested in participating.

Advisory group members, including alternates, are expected to be prepared and attend all scheduled meetings of their advisory group. This includes all regular, adjourned or special meetings, which may be called. The meeting schedule for each group is provided in the section describing the individual commissions, boards and committees. These schedules are established by the different groups at times most convenient for their members through their by-laws or other official documents. Time commitment varies from one advisory group to the next but can be extensive for some groups. Advisory group members may be required to attend an initial orientation and training workshop to receive pertinent information regarding the Brown Act, meeting management, agenda preparation, etc.

If a member has three (3) unexcused absences per year from regular commission meetings without cause and/or without notifying the chairperson or City staff, he/she may be removed from office. It is mandatory for a member to attend at least 60% of the meetings. [Some advisory groups have amended their bylaws. Check your advisory group's bylaws for more details.] A member may be removed from office if he/she no longer meets the membership requirements for the advisory group to which he/she belongs. A member may be removed for failure to complete and file a Statement of Economic Interests as required by the City's Local Conflict of Interest Code. An advisory group member can also be removed from office, with or without cause, by the legislative body that appointed them--the City Council, Community Development Commission or Harbor District Board. If a member is recommended for removal by the chair or staff, proper notification will be submitted to the City Clerk for processing. The chair/advisory group is not responsible for the removal of a member on their own authority.

# **PUBLIC SERVICE ETHICS**

Since advisory group members are appointed to serve in the best interests of the City and Oceanside residents, special attention should be paid to the fundamentals of ethical conduct for public officials and volunteers.

## **Public Interest**

Advisory group members should use their appointments to advance public interests and not to attain personal benefit or pursue any other private interest incompatible with the public good.

## **Democratic Leadership**

Advisory group members should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by observing the letter and spirit of laws and rules.

## **Accountability**

Advisory group members should assure that government is conducted openly, efficiently, equitably and honorably in a manner that permits the citizenry to make informed conclusions and hold government officials accountable.

## **Objective Judgment**

Advisory group members should employ independent objective judgment in performing their duties, deciding all matters on the merit of an issue free from avoidable conflicts of interest and both real and perceived improper influences.

- Advisory group members should safeguard their ability to make independent, fair and impartial judgments by scrupulously avoiding financial, social and political relationships that might compromise or give the appearance of compromising their objectivity, independence or honesty. (See section on Conflict of Interest for additional information.)
- Advisory group members should not take any public actions under circumstances where they are not certain that they can do so fairly and objectively. If unsure if the action is appropriate contact the City Clerk or City Attorney's Office for clarification.
- Advisory group members should exercise the power and prerogatives of the office fairly and without prejudice or favoritism, as it is improper to use public authority to reward relatives, friends or supporters or to hinder or punish enemies and opponents.

## THE RALPH M. BROWN ACT

*“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.”*

### **California's Open Meetings Law**

Political accountability is essential to responsible government. In order to help ensure political accountability, State law (Ralph M. Brown Act) requires that the meetings of the City Council and other local legislative bodies, including all commission, board and committee meetings, be open to the public. It is the intent of this law that these legislative bodies conduct their deliberations and take their actions openly. With a few notable exceptions, the meetings of all legislative bodies are open to the public and all interested persons must be permitted to attend.

In the preamble to the Brown Act (California Government Code, Section 54950), the intent of the California open meeting law is clearly stated as follows: "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 their 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."

Additionally, the Brown Act (CGC Sec. 54950 et. seq.), as it applies to advisory groups, requires these groups to establish regular meeting schedules through their bylaws or other official documents setting the time and place of their meetings. At least 72 hours prior to their regular meetings, advisory groups are required to have agendas prepared and posted, describing each item scheduled for consideration at their meetings. These agendas must contain sufficient descriptions to provide the general public with enough information to determine the subject matter of each agenda item. Once agendas, staff

reports and other accompanying documents are distributed to advisory group members, these materials are public records and must be available to the general public.

For an item not on the agenda, i.e., oral communications, an advisory group may not discuss or take action until it can be properly agendaized. A member may ask questions of a speaker or staff to gain a better understanding of the issue being raised, but the only action an advisory group can take is to direct staff to place the issue on a future agenda for their consideration.

The Brown Act does not apply to meetings where less than a majority of an advisory group's members are in attendance or to gatherings where official business does not occur. The Brown Act requirements generally do not apply to conferences, seminars, social and ceremonial occasions, where a majority of an advisory group may be in attendance, as long as official business is not conducted.

Over the years the Brown Act requirements have become increasingly complex and subject to extensive judicial interpretation. If there is a question about the State's open meeting law, the City Attorney is available to provide assistance. Any violation of the Brown Act committed with wrongful intent is a misdemeanor.

In light of how widespread social media is, we provide the following cautions and recommendations:

- Avoid sending emails to the whole legislative body. If it is necessary, provide information only and do not solicit a response.
- When replying to emails, do not communicate your position or make a commitment on a pending matter. Do not reply all to a majority of the legislative body.
- Think carefully before sending any email. Remember, your email can be forwarded by others to a majority of the legislative body and be subject to a Public Records Act request.
- The same cautions regarding emailing apply to texting.
- Be cautious – texting can be easily used to hold a serial meeting before or during a meeting.
- Avoid sending or receiving texts or emails to/from the public or members of the legislative body during a meeting.
- Avoid sending or receiving texts or emails if you have declared a conflict of interest.

***“Open & Public - A User's Guide to the Ralph M. Brown Act”  
is provided as Appendix A***

## **CONFLICT OF INTERESTS/STATEMENT OF ECONOMIC INTERESTS**

In 1974 the people of California passed Proposition 9 and enacted a Political Reform Act to prevent financial conflicts of interest on the part of public officials. This Act requires public officials to disqualify themselves from participating in certain decisions and to disclose financial interests, such as investments, interest in real property, and sources of income, which they may influence or affect during the performance of their official duties. Disclosure is made through filing a form called a "Statement of Economic Interests." This Act further requires that public officials disqualify themselves from making, participating, or exercising any influence in a government decision which may have a reasonably foreseeable impact on the official, a member of the official's immediate family or on a financial interest held by the official.

The Political Reform Act requires local government agencies to adopt conflict of interest codes identifying disclosure requirements and listing designated positions and employees subject to reporting financial interests. The Oceanside Local Conflict of Interest Code (Resolution No. 14-R0698-1 and Oceanside City Code Sections 2.61-2.69) complies with this requirement. A copy of the most recent Oceanside Conflict of Interest Code is provided as Appendix B. As provided for in the Local Conflict of Interest Code, every two years the City Council adopts a resolution identifying those City employees and advisory group members who must file Statements of Economic Interests. Members file these statements with the City Clerk, who is responsible locally for the administration of the Conflict of Interest Code. If an advisory group member has a question about a potential conflict of interest, the City Attorney is available to review the issue and provide direction.

In the section of this handbook describing the different advisory groups, reporting requirements are specified for each group. If an advisory group member is subject to filing requirements, his/her initial statement - Assuming Office Statement - is due within 30 days after taking office. Thereafter, annual Statements of Economic Interests are due each calendar year. When an advisory group member with reporting obligations leaves office, he/she must file a Leaving Office Statement within 30 days after his/her departure.

An advisory group member filing these statements is generally required to report his/her financial interests covering the last 12 months. Leaving Office Statements cover the previous 12 months or the period since a member's last filing. If a person fails to meet these filing deadlines, he/she may be charged a late filing fee. Violations of the Local Conflict of Interest Code are subject to administrative, civil, and criminal sanctions of the Political Reform Act. Statements of Economic Interests are public records and available for public review in the City Clerk's Office or on the City's website. It is a City Council policy that, if an advisory group member fails to file a Statement of Economic Interests, that member will be removed from office.

For your convenience, Statements of Economic Interests are filed on-line. If you are appointed to a Commission or Board listed in the Local Conflict of Interest Code, you will receive correspondence from the City Clerk's Office with directions on how to e-file.

## **ADVISORY GROUP OVERVIEW**

With the reestablishment of the Community Relations Commission in 2023, there are currently 16 active advisory groups in the City. Below you will find a brief outline of each, including the board's purpose, membership composition and any special membership requirements/qualifications, its meeting schedule, Form 700 filing requirements, and contact information for the board's staff liaison(s).

### **ARTS COMMISSION**

**Purpose:** Considers and makes recommendations to the City Council on development and promotion of performing and fine arts programs and arts facilities and policies pertaining to cultural enhancement.

**Composition:** Nine regular voting members and two alternates.

**Meeting Schedule:** Bimonthly, 1<sup>st</sup> Monday at 3:00 p.m.

**Form 700 Filing:** No

**Staff Contact Information:** Kristine Morales, CJ DiMento; (760) 435-5571;  
arts\_commission@oceansideca.org

### **CITIZEN INVESTMENT OVERSIGHT COMMITTEE**

**Purpose:** Reviews investment operations and ensures that the portfolio complies with the investment policy and applicable State and Federal laws.

**Composition:** No less than five voting members who possess some value-added knowledge and experience in the finance, investment, financial services, banking or treasurer service realms. The City Treasurer serves as the ex-officio presiding member of the committee.

**Meeting Schedule:** 2nd Tuesday of February, May, August, & November at 1:30 p.m.

**Form 700 Filing:** No

**Staff Contact Information:** Victor Roy, Cynthia Lagunas; (760) 435-3555;  
cioc@oceansideca.org

### **COMMUNITY RELATIONS COMMISSION**

**Purpose:** Considers, advises, and makes recommendations to Council and the City Manager on policies, programs, services, HR practices, and community engagement strategies in support of a healthy and connected community and strong and secure neighborhoods.

**Composition:** Nine regular voting members.

**Meeting Schedule:** Monthly, 1st Tuesday at 6:00 PM

**Form 700 Filing:** No.

**Staff Contact Information:** Jesus Adame, Terry Winters, Maria Yanez;  
(760) 435-3393; crc@oceansideca.org

**DOWNTOWN ADVISORY COMMITTEE:**

**Purpose:** Advises the Community Development Commission on matters including policy, practice and technical matters to facilitate the development process and encourage timely development of the Downtown Project Area

**Composition:** Nine members (2 members of the community at large, 1 from the tourism industry, 1 residential property owner or occupant from the Downtown Project Area, 1 Oceanside business owner, 1 Planning Commission representative, 1 Economic Development Commission representative, 1 MainStreet Oceanside representative, and 1 Chamber of Commerce representative)

**Meeting Schedule:** Quarterly, dates voted on by the Committee

**Form 700 Filing:** Yes

**Staff Contact Information:** Merisue Repik, Rob Dmohowski, Sergio Madera;  
(760) 435-3563; dac@oceansideca.org

**ECONOMIC DEVELOPMENT COMMISSION:**

**Purpose:** Considers and makes recommendations to the City Council on the attraction and enhancement of opportunities for economic development within the City of Oceanside.

**Composition:** Eleven members (4 from the community at large, 1 from the tourism industry, 1 from the manufacturing & distribution industry, 1 from the banking/finance industry, 1 from the retail/restaurant industry, 1 from the commercial real estate industry, 1 from the non-profit industry, and one MiraCosta College representative); the Mayor and Council have the authority to alter the makeup of the Commission as needed.

**Meeting Schedule:** Bimonthly, 2<sup>nd</sup> Tuesday at 3:00 p.m.

**Form 700 Filing:** Yes

**Staff Contact Information:** Michelle Geller, Patricia Mosher; (760) 435-3351;  
edc@oceansideca.org

**HARBOR AND BEACHES ADVISORY COMMITTEE:**

**Purpose:** Advises the City Council and Oceanside Small Craft Harbor District Board of Directors regarding matters related to the function and operation of the Oceanside Small Craft Harbor and the City beaches.

**Composition:** Nine members (2 from the community at large, 1 liveaboard permit holder, 1 non-liveaboard boat-owner permit holder, 1 commercial fishing permit holder, 1 non-boat owner resident of Oceanside, 1 Oceanside beachfront property owner, 1 member of the Oceanside Yacht Club, and 1 Chamber of Commerce representative)

**Meeting Schedule:** Six times yearly, dates voted on by the Committee

**Form 700 Filing:** No

**Staff Contact Information:** Rosa Jones, Joseph Ravitch; (760) 435-5176;  
hbac@oceansideca.org

**HISTORICAL PRESERVATION ADVISORY COMMISSION:**

**Purpose:** Considers and makes recommendations on issues relating to the identification, protection, retention, and preservation of historical areas and sites within the City. The commission is charged to safeguard the heritage of the City by providing for the protection of historical sites and areas representing significant elements of its history.

**Composition:** Seven members (1 licensed architect; 1 licensed civil engineer (or a person specially qualified by reason of training or experience in structural rehabilitation); 1 member who is knowledgeable in local history, architecture and cultural development; 1 30-year resident; and 3 members of the community at large)

**Meeting Schedule:** 3rd Tuesday of each Quarter at 6:00 pm

**Form 700 Filing:** Yes

**Staff Contact Information:** Merisue Repik, Shannon Vitale; (760) 435- 3927;  
hpac@oceansideca.org

**HOUSING COMMISSION:**

**Purpose:** Considers and makes recommendations to the City Council on policies pertaining to programs for low- and moderate-income housing and homelessness.

**Composition:** Nine voting members (7 members of the community at large and 2 Oceanside Housing Authority tenants, 1 of whom must be 62+ years old), and two alternates.

**Meeting Schedule:** Monthly, 4th Tuesday at 6:15 pm

**Form 700 Filing:** Yes

**Staff Contact Information:** Jesus Adame, Terry Winters, Leilani Hines;  
(760) 435-3377; hc@oceansideca.org

**LIBRARY BOARD OF TRUSTEES:**

**Purpose:** Sets policy and makes all rules and regulations pertaining to the Library hours of operation, services provided and the selection of materials placed in the facilities. The Board's efforts directly translate into making available books and other materials that will encourage Oceanside residents to better educate themselves and enhance their standards of living.

**Composition:** Five voting trustees

**Meeting Schedule:** Monthly, 4<sup>th</sup> Tuesday at 2:00 p.m.

**Form 700 Filing:** Yes

**Staff Contact Information:** Cheri Noel, CJ Dimento; (760) 435-5564;  
lbot@oceansideca.org

**MANUFACTURED HOMES FAIR PRACTICES COMMISSION:**

**Purpose:** Conducts public hearings to set rent levels in all mobile home parks in Oceanside subject to Chapter 16B of the Oceanside City Code (Manufactured Home Fair Practices Ordinance).

**Composition:** Five regular members and two alternate members. No member shall be a manufactured home owner or resident; be an owner, operator or manager of a manufactured home park; own or possess any interest in, or operate or manage, any other rental property totaling four or more dwelling units, whether located on one parcel or lot or spread among several parcels or lots.

**Meeting Schedule:** Monthly, 1<sup>st</sup> Thursday at 6:00 p.m.

**Form 700 Filing:** Yes

**Staff Contact Information:** Jesus Adame, Zeb Navarro; (760) 435-3320;  
MHFPC\_AutoReply@oceansideca.org

**MEASURE X CITIZENS' OVERSIGHT COMMITTEE**

**Purpose:** The purpose of the Measure X Citizens' Oversight Committee is to review and report on the City compliance with the provisions of Measure X, particularly with respect to the City's accounting and expenditure of Measure X revenues.

**Composition:** Seven members (1 member recommended by the Oceanside Chamber of Commerce or active in the business community; 1 member recommended by the San Diego County Taxpayers Association; 2 members recommended by the City of Oceanside's Public Safety Associations; 2 members qualified in one of the following fields: accounting, finance, engineering, construction, municipal government; 1 member who is active in the Oceanside community at large.)

**Meeting Schedule:** Varies, dates voted on by Committee.

**Form 700 Filing:** Yes

**Staff Contact Information:** Maddison Zafra, Michael Gossman; (760) 435-3065;  
measurexcoc@oceansideca.org

**PARKS AND RECREATION COMMISSION:**

**Purpose:** Considers and makes recommendations to the City Council on policies pertaining to the acquisition, development, operation and maintenance of City park facilities, beach facilities, community center facilities and golf course facilities, and shall advise in the planning of City recreation and leisure programs and special events.

**Composition:** Nine regular voting members and two alternates.

**Meeting Schedule:** Bimonthly, 2<sup>nd</sup> Tuesday at 6:00 p.m.

**Form 700 Filing:** No

**Staff Contact Information:** Marissa Sisario, Manuel Gonzalez; 760-435-5561;  
parc@oceansideca.org

**PLANNING COMMISSION:**

**Purpose:** Considers matters related to planning and development. The commission is charged with the development of the General Plan, formulation and administration of the zoning ordinance and map, and review of development applications.

**Composition:** Seven voting members. The City Planner serves as an ex-officio member with no voting rights.

**Meeting Schedule:** Bi-monthly, 2<sup>nd</sup> and 4<sup>th</sup> Monday at 6:00 p.m.

**Form 700 Filing:** Yes

**Staff Contact Information:** Merisue Repik, Sergio Madera; (760) 435-3572;  
planningcommission@oceansideca.org

**POLICE AND FIRE COMMISSION:**

**Purpose:** Advises the City Council on policy matters pertaining to safety, police, fire and other areas wherein the matter of public safety may be of concern.

**Composition:** Nine regular voting members.

**Meeting Schedule:** Bi-monthly, 3<sup>rd</sup> Thursday at 4:00 p.m.

**Form 700 Filing:** No

**Staff Contact Information:** Tiera Garfield, Wendy Sullivan, Dave Parsons,  
Kedrick Sadler; (760) 435-4314; paafc@ocenasideca.org

**REHABILITATION LOAN REVIEW COMMITTEE:**

**Purpose:** Reviews and makes reports and recommendations to the Community Development Commission regarding all applications for housing rehabilitation loans made or administered by the Commission.

**Composition:** Three regular voting members.

**Meeting Schedule:** On call as needed.

**Form 700 Filing:** Yes

**Staff Contact Information:** Terri Winters, Leilani Hines; (760) 435-3377;  
rlrc@oceansideca.org

**UTILITIES COMMISSION:**

**Purpose:** Considers and makes recommendations to the City Council on policies pertaining to municipal water facilities, sewer facilities and drainage facilities.

**Composition:** Seven regular voting members and two alternates.

**Meeting Schedule:** Bi-Monthly, 3<sup>rd</sup> Tuesday at 3:30 p.m.

**Form 700 Filing:** No

**Staff Contact Information:** Rebecca Bennet, Lindsay Leahy; (760) 435-5913;  
uc@oceansideca.org

## PARLIAMENTARY PROCEDURES

*“Parliamentary law rests on certain principles. Perhaps the most important is the principle of rights: **the right of the majority ultimately to rule, the right of the minority to be heard, and the right of the individual to participate in the decision-making process.**”*

When holding an advisory group meeting, members should follow the parliamentary system to ensure order, guarantee the rights of individuals, and effectively conduct business. It should be remembered that parliamentary procedures should be used to facilitate meetings and not over-used so as to become an obstacle to their proceedings. Described below are some basic terms and concepts to give members a general understanding of parliamentary procedures as they apply to advisory groups when they conduct their business. The chairperson for each of the advisory groups has been given a current copy of the City Code (Article 1, Sections 2.1–2.69) relating to the conduct of City Council meetings and Robert’s Rules of Order to resolve issues that may come up. The City Code should be consulted first, followed by Robert’s Rules of Order.

### **Presiding Officer**

The chairperson is elected by the membership and is responsible for conducting the meetings. Duties generally assigned to the presiding officer are:

- Reviews the agenda and supporting material prior to the meeting and communicates with staff on issues of clarification and potential outcomes
- Opens the meetings at the scheduled time
- Announces in proper sequence the order of business to come before the group
- Recognizes members to speak
- Puts to a vote all motions properly brought before the group
- Enforces rules relating to decorum and order
- Decides all questions of order subject to appeal of the group
- Expedites business in every way possible compatible with the rights of the members
- Responds to questions from members regarding parliamentary procedures
- Adjourns the meeting when business is concluded

## **Bylaws, and/or Resolutions, and/or Ordinances**

All advisory groups have adopted Bylaws, and/or resolutions and/or ordinances to govern their procedures for conducting business. These documents describe the rules of the organization, defining how the group is organized and how it will function.

## **Obtaining the Floor**

Before a member may speak, address the group or make a motion during the meeting of a legislative body or advisory group, he/she must first be recognized by the chairperson as having the right to be heard at that time. The process of being recognized is referred to as obtaining the floor.

## **Quorum**

A quorum is the requirement that a minimum of 51% of the members be present at a meeting for business to be properly transacted. A quorum can be constituted by the inclusion of alternates filling in for regular members. When an alternate is seated, he/she becomes a voting member, but must have been present for all discussions pertaining to the items being voted on. The requirement for a quorum protects against unrepresented actions by a small number of members in the name of the entire group. The only action an advisory group should take when a majority of the members are not in attendance is to adjourn the meeting to a time when a quorum can be present.

## **Order of Business**

The sequence in which certain general types or classes of business are brought up or introduced at a meeting for action by the membership is referred to as the order of business. Items of business are usually listed on the agenda for the meeting under these general classes of business. An item of business can be taken out of order with the consent of a two-thirds vote of the membership. Orders of the day are items of business scheduled in advance to be taken up at the meeting at a specific time (time certain) to allow sufficient time for discussion and full consideration of a subject of important interest.

## **Main Motion**

The main motion is the means by which business is brought before a legislative body or group, i.e. a formal proposal by a member that action be taken. To introduce a main motion, a member must obtain the floor when no other question is pending and when business addressed by the motion is in order. As a general rule, a member introduces his/her motion with the words "I move that..." and then states the motion being offered. Only one main motion should be considered at any given time. After a motion has been made, another member must second the motion before the group can consider the proposal. By seconding a motion, a member supports consideration of the proposal by the group. Once a motion is introduced and seconded, consideration of the proposal is handled through three basic steps: members' debate (discuss) the motion, the chair puts the question to a vote, and the results of the vote are announced. It should be

remembered that an affirmative majority vote of the entire membership is necessary for action to be taken.

## **Subsidiary Motions**

In addition to the original main motion, there are seven motions called subsidiary motions that may be made while an original main motion is pending. Subsidiary motions are motions that may be applied to an original main motion and must be acted upon ahead of an original main motion. By their use, an original main motion may be rejected, amended, referred to a committee, postponed to a certain time, postponed indefinitely, debate may be limited or closed, or the original main motion may be tabled (postponed indefinitely). Thus, subsidiary motions are motions that may be applied to, or have reference to, an original main motion.

## **Substitute Motion**

A substitute motion serves the same purpose as an amendment but with a greater impact. A substitute motion will change an entire paragraph or perhaps the entire motion, resolution, or ordinance it deals with. The use of a substitute motion quite often prevents a split vote. It provides an alternative to a vote that will probably fail. A substitute motion is subject to debate and amendment.

# **CITY ADVISORY GROUP PROCEDURAL AND DECORUM GUIDELINES**

## **In General**

- The provisions of these guidelines are intended to supplement Advisory Group Bylaws and the provisions of the Ralph M. Brown Act with respect to matters not covered by the Act or which are the subjects of local regulation under the Act. To the extent of any conflict between the provisions of these guidelines and the Act, the provisions of the Act shall prevail.
- If a matter arises at an advisory group meeting that is not covered by these guidelines or applicable provisions of federal or state law or the Oceanside City Code, the latest revised edition of Robert's Rules of Order may be used as a guide for resolution of the particular procedural issue raised to the extent that such rules are applicable to a advisory group body.
- The City Clerk shall provide a copy of the guidelines and of the Ralph M. Brown Act to each member of a City advisory group and to each person selected to serve as a member of an advisory group who has not assumed the duties as a member.

The City Clerk shall also provide the presiding officer and staff liaison with the latest edition of Robert's Rules of Order.

## **Decorum and Order at Advisory Group Meetings by City Staff**

While an advisory group is in session, the advisory group members and city staff shall observe good order and decorum. A member of an advisory group or city staff shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the group, nor disturb any member while speaking.

## **Decorum and Order at Advisory Group Meetings by the Audience**

Members of the public attending advisory group meetings shall observe the same rules of order and decorum applicable to city advisory groups and staff and shall comply with the provisions of these guidelines.

## **Enforcement of Decorum**

- Unauthorized remarks from the audience or members thereof, stamping of feet, unruly applause, whistles, yells, and raucous demonstrations shall not be permitted by the presiding officer. If such conduct continues after

directions by the presiding officer to cease, the presiding officer may order such offenders to leave the meeting room. If a person fails to leave as ordered, the person shall be removed from the meeting room by the sergeant-at-arms upon direction by the presiding officer.

- Any person willfully disrupting the proceedings of an advisory group, and who continues to do so after being directed by the presiding officer to cease, or being ruled out of order by the presiding officer, or who otherwise refuses to carry out directions or instructions given by the presiding officer for the purpose of maintaining order and decorum at the advisory group, may be ordered by the presiding officer to leave the meeting room. If the person fails to leave as ordered, the person shall be removed from the meeting room by the sergeant-at-arms upon direction by the presiding officer.
- The presiding officer shall not find a person in violation of the above two subsections solely because the statements made by the person criticize the policies, procedures, programs or services of the city, or the acts or omission of a city advisory group.
- The Chief of Police or such member of the Police Department as the Chief may designate shall be sergeant-at-arms of a city advisory group and shall attend meetings at the request of the presiding officer, City Manager, or City Council. The sergeant-at-arms shall be available to respond to all meetings immediately upon call. The sergeant-at-arms shall carry out all instructions given by the presiding officer for the purpose of maintaining order and decorum at the advisory group meetings. The performance of the duties of the sergeant-at-arms pursuant to this section shall be official duties for the purposes of Penal Code Section 148.

## **Calling the Question**

A member of an advisory group who wishes to terminate discussion of a motion or item may call for the question. If the call is seconded, the presiding officer shall ask for a vote. If the vote carries, the advisory group shall then vote on the pending motion without further discussion.

## **Voting Procedure**

- Voting shall be conducted by the use of the voting light system installed in the council chambers or by verbal communication in the following manner. A green light designates a "Yes or Affirmative" vote. A red light designates a "No or Negative" vote, and a white light designates a vote to "Abstain." Where the light system is not available or used, members shall vote by answering "Yes" for an affirmative vote, "No" for a negative vote, or "Abstain" where a member declines to vote at all.

- When an advisory group is voting a voice vote, an affirmative vote shall be registered by the oral statement of “Yes” or “Aye” by the member voting. A negative vote shall be registered by the oral statement of “No” or “Nay” by the member voting. An abstention shall be registered by the oral statement of “Abstain” by the member.

## **Request for Determination of Conflict of Interest**

If an advisory group member has reason to believe he or she has a conflict of interest with respect to a governmental decision, he or she may give the full facts of the matter to the City Attorney and request advice thereon. The request for advice should be submitted to the City Attorney sufficiently in advance of the meeting to allow the City Attorney a reasonable opportunity to analyze the facts stated and the applicable law. Any response by the City Attorney shall be delivered to each member of the advisory group before the meeting in question. Oral responses shall be stated on the public record. If a determination whether it is reasonably foreseeable that a financial interest would be affected by a governmental decision depends on the advice of an appraiser or similar professional, except an attorney, the City Attorney may retain such professional at city expense. Nothing in this section shall be deemed to preclude the member or the City Attorney from seeking assistance or advice on a conflict of interest matter from the Fair Political Practices Commission.

## **Failure to Vote**

Every advisory group member should vote unless disqualified by reason of conflict of interest. An advisory group member who abstains from voting acknowledges that a majority of the quorum may decide the question voted upon.

## **Tie Votes**

- Tie votes or a vote lacking the required number of affirmative votes shall constitute “no action,” and the matter voted upon remains before an advisory group and is subject to further consideration. If an advisory group is unable to take action on a matter before it because of a tie vote or the lack of the required number of votes, the City Clerk, secretary or other designated staff representative shall place the item on the next regular meeting of the advisory group for further consideration. If after subsequent consideration, the vote remains tied or the requisite number of affirmative votes is not obtained, the vote shall be deemed to result in a failure of the pending motion or a denial of the requested action.
- The above subsection shall not apply to votes in which all members of an advisory group participate, unless a member abstains for reasons other than a conflict of interest, or to vote on matters from which an advisory group member is disqualified from participation by operation of state law, in which event a tie vote or vote lacking the requisite number of affirmative vote shall be deemed to result in a failure of the pending motion or a denial of the requested action.

## **Changing Votes**

An advisory group member may change his or her vote only if a timely request to do so is made immediately following the announcement of the vote by the City Clerk, secretary or other designated staff representative and prior to the time the next item in the order of business is taken up. An advisory group member who publicly announces that he or she is abstaining from voting on a particular matter shall not subsequently be allowed to withdraw the abstention.

## **Role of Alternates**

Alternate members of the City's advisory groups may provide input on issues brought before the advisory group for action. An alternate member is permitted to vote on an issue only if a regular member is absent. If a regular member of the advisory group arrives at the meeting after discussion of an item has begun and an alternate is serving in his/her absence, the alternate is the voting member of the advisory group for that item. At the conclusion of the item and after the vote is taken, the regular member of the advisory group resumes his/her seat as a voting member. An advisory group member must be present for all discussion on an agenda item to be allowed to vote. If the absent member has an opportunity prior to the vote to listen to a recording of the oral testimony, examine all the evidence presented and can represent that he or she has a full understanding of the matter, the member may vote on the item.

## **Reconsideration of Advisory Group Actions**

- A motion to reconsider any action taken by an advisory group may be made either immediately during the same session or at the adjourned or subsequent meeting at which the subject item has been placed on the agenda. Such motion may be made only by one of the advisory group members who voted with the prevailing side.
- A motion to rescind, repeal, cancel or otherwise nullify prior advisory group action shall be in order at any subsequent meeting of the advisory group and may be made by any advisory group member. The effect of such action shall operate prospectively and not retroactively and shall not operate to adversely affect rights which may have been vested in the interim without notice and an opportunity to be heard having been given to the affected party or parties.

## **Advertised Public Hearing – When Held**

- Wherever an advisory group is required to hold a public hearing on any matter before it, such hearing will be held in accordance with the rules and procedures set forth in these guidelines. Nothing in this chapter shall prohibit or limit the advisory group from holding a public hearing on any matter before it, whether required by law or not, and nothing in this chapter shall prohibit or limit any member of the public from addressing an advisory group in

accordance with the procedures provided for in this section, irrespective of whether or not a public hearing is being held.

- Public hearings shall be scheduled to begin at a time certain, which shall be the hour the advisory group convenes or such other time as may be stated on the agenda. An advisory group shall hold public hearings in the order scheduled on the agenda at the time stated, or as soon thereafter as practicable. The presiding officer, with the consent of the advisory group and for good cause, may alter the scheduled order of public hearings. Time certain public hearing items shall have priority over other matters set for consideration at a time certain. If the hearing is continued to a time less than twenty-four (24) hours after the time specified in the notice of such hearing, a notice of continuance shall be posted immediately after the meeting. It is important to note that, if an advisory group is holding a required public hearing, all notification requirements must be strictly adhered to as set forth in the Government Code Section 65090, Public Hearing Notices.

## **Procedure for Conducting Hearings**

- The presiding officer shall announce that it is the time and place for a public hearing scheduled on the agenda.
- Prior to advisory group public hearings, copies of the advisory group agenda with attachments, including the staff reports, if any, shall be available on the City's Website at least twenty-four (24) hours prior to commencement of the hearings; provided, however, advisory groups may allow in their discretion the filing of supplemental reports that shall be made public at the commencement of the hearing. Advisory group agendas are also posted in the kiosk at City Hall.
- The order of a hearing shall be as follows unless otherwise required by law:
  - Presentation by the City Clerk, secretary or other designated staff representative of previously filed written correspondence or petitions.
  - Presentation of staff and/or advisory staff report.
  - Questions from the advisory group.
  - Presentation by the applicant, if any (20 minutes).
  - Public testimony or input.
  - Rebuttal by applicant of facts presented during other testimony (remainder of unused minutes from presentation).
  - Further questions from commission.

After rebuttal by the applicant, no further public testimony shall be permitted, except direct responses to questions by a commission member if permitted by the presiding officer. The presiding officer may order the testimony of persons in favor or in opposition in any manner deemed appropriate by the presiding officer.

- The presiding officer may set longer or shorter time limits than otherwise allowed with the consent of the advisory group dependent upon the necessity of ensuring adequate presentation of testimony and evidence to provide a fair hearing.
- If a public hearing cannot be reasonably concluded in light of other business to be conducted and the number of persons desiring to present testimony, the hearing may be continued to another date or dates by the presiding officer.

## **Evidence at Hearings**

- If there is a staff report, it shall be considered as evidence and shall become part of the record of a public hearing. Such report need not be read in full as part of the staff presentation. A synopsis of such report may be presented orally by staff members to an advisory group. In addition, any of the following may be presented to the advisory group and, if presented, shall also become part of the record:
  - Exhibits and documents used by the city staff and any persons participating in the hearing;
  - Maps and displays presented for use at the hearing; provided that, whenever practicable, they shall be displayed in full view of the participants and the audience;
  - All communications and petitions concerning the subject matter of the hearing; provided that a reading of such matters only shall be had at the request of an advisory group member;
  - Information obtained outside the advisory group meeting, such as a view of the site, provided that such information, to the extent it forms the basis for findings in a quasi-adjudicative matter, shall be disclosed for the record;
  - All exhibits, reports, maps and other physical evidence placed before an advisory group shall be retained by the City Clerk, secretary or other designated staff representative. Such exhibits may be released by the clerk with the approval of the City Attorney. Items that are large, perishable, bulky or otherwise difficult to store may be returned to the persons submitting the item provided that a photographic or some other type of electronic record of the item is retained by the City Clerk, secretary or other designated staff representative.

## **CONDUCTING EFFECTIVE MEETINGS**

Public input received during meetings can sometimes result in heated debates and even conflict. Participants at advisory group meetings are usually highly motivated and often nervous. When a group of adversaries are in one room, the possibility of uncontrolled conflict is high. In these cases, the advisory group's role is to guide conflict to positive results.

The following suggestions should help manage public input, conflict and confrontation effectively:

- Anticipate problems by preparing for meetings in order to allow maximum concentration on the dynamics of the meetings rather than spending time learning about the issue while others are giving input
- Set public input rules and make sure the audience understands what the advisory group expects
- Explain carefully the purpose of the meeting and what action is expected at the conclusion of the public input
- All speakers should clearly identify themselves, not only for the record, but also so members of the advisory group can address them by name
- Set time limits on hearing the public input, a recommendation is that each speaker be limited to 3 minutes to avoid speakers dominating the meeting with unnecessary questions or repetitive comments
- Make decisions as promptly as possible and try not to delay actions as to cause the public to attend additional unnecessary meetings
- Don't over-react to inflammatory comments; instead try to turn these expressions of frustration into constructive comments by asking questions to clarify the speaker's intentions
- Avoid speaker-to-audience conversations and debate
- Treat all sides fairly, with respect and courtesy, and allow all speakers the same opportunity to provide input
- Understand that the democratic process is founded on the opportunity for the public to have an open debate on issues of public policy. Commissioners should welcome the free expression of opinions, and should not criticize or berate any citizens who express a view contrary to their own

- After hearing all public comments, each advisory group member should be allowed an opportunity to express his or her comments regarding the issue at hand
- Use the meeting to gather information that will help the group to make an objective judgement and decision pertaining to the issue at hand

The City Council has adopted a code that establishes rules and procedures (Ordinance No. 094-10 - see Section 2.1.63) making it unlawful for a member of an advisory group to willfully delay or disrupt the proceedings of a meeting. Unauthorized remarks from the audience or a member shall neither by conversation or other raucous actions interrupt the peace of a meeting. Members of the public are also required to observe the same rules of order and decorum applicable to advisory group members. The ordinance provides the chairperson with the authority to enforce these rules and to maintain order at a meeting.

*“None of us is as smart as all of us”*  
Kenneth Blanchard

## Excerpt of Ordinance No. O94-10

### 2.1.28 Decorum and order—Council and City Staff.

While the council is in session, the council members and city staff shall observe good order and decorum. A member of the city council or city staff shall neither, by conversation or otherwise, delay or interrupt the proceedings or the peace of the council, nor disturb any member while speaking.

### 2.1.29 Decorum and order—Audience.

Members of the public attending council meetings shall observe the same rules of order and decorum applicable to the city council and staff and shall comply with the provisions of sections 2.1.30.

### 2.1.30 Enforcement of decorum.

(a) Unauthorized remarks from the audience or members thereof, stamping of feet, unruly applause, whistles, yells, and raucous demonstrations shall not be permitted by the presiding officer. If such conduct continues after directions by the presiding officer to cease, the presiding officer may order such offenders to leave the meeting room. If a person fails to leave as ordered, the person shall be removed from the meeting room by the sergeant-at-arms upon direction by the presiding officer.

(b) Any person willfully disrupting the proceedings of the council, and who continues to do so after being directed by the presiding officer to cease or being ruled out of order by the presiding officer, or who otherwise refuses to carry out directions or instructions given by the presiding officer for the purpose of maintaining order and decorum at the council meeting, may be ordered by the presiding officer to leave the meeting room. If the person fails to leave as ordered, the person shall be removed from the meeting room by the sergeant-at-arms upon direction by the presiding officer.

(c) It is an infraction punishable pursuant to Section 1.07 of this code for any person who once has been ordered removed from the meeting room, thereafter to disrupt the same or any subsequent meeting in the manner described in subsection (a) or (b) above.

(d) The presiding officer shall not find a person in violation of subsection (a) or (b) solely because the statements made by the person criticize the policies, procedures, programs or services of the city, or the acts or omissions of the city council.

(e) The chief of police or such member of the police department as the chief may designate shall be sergeant-at-arms of the city council and shall attend meetings at the request of the presiding officer, city manager, or city council. The sergeant-at-arms shall be available to respond to all meetings immediately upon call. The sergeant-at-arms shall carry out all instructions given by the presiding officer or city council for the purpose of maintaining order and decorum at the council meetings. The performance of

the duties of the sergeant-at-arms pursuant to this section shall be official duties for the purposes of Penal Code Section 148.

(f) In addition to the provisions of this section, the presiding officer, with the consent of the city council, may invoke the remedies and procedures established by Government Code Section 54957.9.

## **ABOUT THE CITY OF OCEANSIDE**

The City of Oceanside, incorporated in 1888, is a municipal corporation and has a five-member elected City Council that serves the community at large as the legislative body of the corporation. As elected officials, the Mayor and City Councilmembers serve at the pleasure of the voters and make decisions on issues and policies relating to general City operations. The City Council also serves as the Community Development Commission (CDC), providing direction/policy on matters for the Housing Agency, and the Oceanside Small Craft Harbor Board of Directors.

As an elected official, the City Clerk provides legislative services to the City Council, Community Development Commission and the Oceanside Harbor District, serving as the Secretary to both the CDC and Harbor District. The City Treasurer, also an elected official, serves as the Treasurer for the City, Community Development Commission and the Oceanside Harbor District. Both elected officials serve at the pleasure of the voters.

The City of Oceanside follows the Council/Manager form of government in which the City Council sets laws and policies, and the City Manager performs administrative duties established by ordinances and City policies.

The City Manager is appointed by the City Council to serve as the City's Chief Executive Officer and is responsible for the management of all municipal programs and services. The City Manager also serves as Executive Director to the Community Development Commission and the Chief Administrative Officer for the Oceanside Harbor District. As part of the duties, the City Manager oversees operations of City departments through the Department Directors.

The City Attorney is appointed by the City Council to serve as legal counsel to the City, Community Development Commission, and the Oceanside Harbor District

The City of Oceanside is a Charter City as of June 8, 2010. A City governed on the basis of a Charter establishes its powers and authorities as contrasted with a General Law City that enjoys only those powers specifically granted to it by the State.

As a full-service City, Oceanside provides the community with such services as police, fire, library, water and sewer. In addition, the City has an airport, a small craft harbor, a municipal pier, golf courses, swimming pools and numerous parks and community center facilities.

# **CITY DEPARTMENTS: AN OVERVIEW**

## **City Manager's Office**

The City Manager's Office provides leadership and oversight for the administration of all City services and activities. The Manager's Office supports the City Council, Harbor District Board and Community Development Commission, directing activities of City departments. Coordination of financial planning, budget preparation, public information, information technology systems, risk management, citizen group support and policy development are key functions of the Manager's Office.

## **City Attorney's Office**

The City Attorney's Office provides legal services to the City Council, City Clerk, City Treasurer, City Manager, department directors, and City Advisory Groups. Additionally, the City Attorney's Office serves as legal counsel to the Harbor District and the Community Development Commission. The services of the Attorney's Office include advice and counseling as to the legality of proposed actions, as well as the defense of such actions after the fact, which can involve the use of outside counsel with the approval of the City Council. The Attorney's Office is also responsible for prosecuting City Code violations.

## **City Clerk's Office**

The mission of the City Clerk Department is to serve as the source of informational, historical, legislative and election services for the community, the public and City agencies, and to provide these services in an efficient, effective and friendly manner. The Clerk maintains custody of the City seal, handles codification of the City Code, maintains and catalogs City records, and manages all municipal elections.

## **City Treasurer's Office**

The Treasurer's Office manages the City's investment portfolio in order to protect principal and earn the highest rate of return. The Office also manages the special assessments of the City.

## **Development Services Department**

**Building:** The Building Division of Development Services enforces State building codes, mobile home park regulations and various City codes. The division handles building plan check services, the issuance of building permits, and record keeping for all building projects within the City, both public and private. It also ensures that all construction in the City is conducted in compliance with City-issued building permits.

**Code Enforcement:** The purpose of Code Enforcement is to assure compliance with the zoning ordinance and other code sections that are related to private property usage promoting health, safety, property preservation, and community enhancement.

**Engineering:** The Engineering Division of Development Services is responsible for the management of public infrastructure and private land development. This division administers all aspects of engineering and inspection activities relating to private development, Capital Improvement Programs (CIP) and traffic-related issues. The Engineering Division is responsible for the City's engineering review of all public and private sector development projects, preparing and maintaining documentation and records of all activity and providing information to the public.

**Planning:** The Planning Division of Development Services administers land use policies under the auspices of Federal, State and local laws and ordinances. The division oversees development applications as they relate to the General Plan, the Local Coastal Program, the Oceanside Historic Preservation Ordinance and other planning policies. The division directs the administrative processes that determine how land will be developed both now and in the future with the goal of providing for adequate public facilities and services to serve residents of Oceanside.

## **Economic Development Division**

The Economic Development Division, under the City Manager, works to increase the short-term and long-term business opportunities in the City, thereby enhancing economic growth. The City Council approves the City's Strategic Plan for Economic Development that outlines various strategies to increase business interest and investment in the City. Key strategies in the plan include: assuring economic infrastructure, retaining and expanding current businesses, facilitating businesses through the City's planning and permitting process, enhancing the City's image and promoting the City as a tourist destination.

## **Financial Services Department**

The Financial Services Department is an internal service agency for the City organization. The department's mission is to provide financial and budgetary support to all departments of the City.

## **Fire Department**

The Fire Department provides emergency and non-emergency services to protect the safety of life and property. In addition to fire suppression, emergency medical services are also the department's responsibility, providing supervised transportation to victims of accidents or illness to a primary care hospital or trauma center. Other duties of the department include fire and arson investigation, fire prevention inspections, hazardous materials control, fire code enforcement, management of city-wide disasters, mutual aid to other agencies, and lifeguard services.

## **Housing & Neighborhood Services**

The mission of the Housing & Neighborhood Services Department is to develop and implement housing and community development programs, operate neighborhood resource centers and coordinate childcare services for the benefit of low- and moderate-income households throughout the City, and to assure compliance with the Manufactured Home Fair Practices Ordinance.

## **Human Resources Department**

The Human Resources Department provides staff support for all City departments in employee and labor relations, collective bargaining, equal employment opportunities, recruitment and selection, classification and compensation administration, workers' compensation, safety and training.

## **Library Department**

The Oceanside Public Library collects, organizes and makes available printed, electronic and audio-visual resources to meet the informational, educational and recreational needs of Oceanside residents. Through the Civic Center Library, the Old Mission Branch facility, the Community Computer Center, and bookmobile services, the Library staff maintains collections of books, periodicals, videos, audio tapes, compact disks, and computerized research tools for children, young adults and adults to use. The department provides outreach programs to serve the needs of the homebound and disabled.

## **Parks and Recreation**

The purpose of Park and Recreation is to handle recreational programming and services for community centers, senior centers, skateparks, and swim centers. This division of Neighborhood Services works to provide Oceanside residents with access to a variety of recreational programs including sports, aquatics, citywide special events, and after school programs.

## **Police Department/Harbor Police**

The Police Department maintains the peace and order, safeguards lives and property, and protects against criminal conduct. The department works with the community to provide quality, efficient service that actively prevents crime, reduces the fear of crime and promotes the safety of the community through problem solving. Police officers respond to emergency and non-emergency calls for service. They are charged with the responsibility of detecting and apprehending all violators ranging from minor traffic offenders to serious felons. The department investigates crimes committed in the City and assigns detectives to collect evidence and assist with the prosecution of criminal cases through the judicial system.

## **Public Works Department**

In partnership with our community, the Public Works Department is committed to providing the highest level of service to construct, maintain and enhance public facilities, programs and infrastructure in a cost-effective manner. The Department maintains the City's transportation system, street lights, traffic signals, fleet, streets, flood control systems, trees, parks, harbor, beaches and pier. Special emphasis is placed on services to neighborhoods including solid waste cleanup, street sweeping and graffiti control.

## **Water Utilities Department**

The Water Utilities Department is responsible for providing a safe and reliable water supply to Oceanside and for collecting, treating, and disposing wastewater in an environmentally acceptable way at the least possible cost. The department purchases water from the San Diego County Water Authority and distributes it throughout the City for residential, commercial, agricultural and fire protection use. Water must be available upon demand for all purposes on a 24-hour basis without any interruption in service. Reservoirs store the City's water supply so that enough water is available for all day-to-day needs. Department staff repairs waterlines, reads water meters, provides customer information and manages the operations of two wastewater treatment plants. Additionally, staff works with local industries to make sure they treat waste products properly.

The Mission Basin Groundwater Purification Facility is a desalting treatment facility that provides 15% of the City's water supply. The Facility uses reverse osmosis to treat local brackish groundwater extracted from the Mission Basin. The reverse osmosis treatment process reduces salt concentrations in the groundwater; additional treatment removes iron and manganese. The Facility was put into service in 1992 with a capacity of 2.0 million gallons per day and expanded to its current capacity of 6.4 million gallons per day in 2002.

## **APPENDIX - A**

### **A Guide to the Ralph M. Brown Act**

# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024



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# Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT  
 REVISED JANUARY 2024

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# Chapter 1

## IT IS THE PEOPLE’S BUSINESS

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# Chapter 1

## IT IS THE PEOPLE'S BUSINESS



### The right of access

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

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

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

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

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

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

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

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

### Broad coverage

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

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

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

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

### Narrow exemptions

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

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

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

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

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

### Public participation in meetings

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

Legislative bodies may, however, adopt reasonable regulations on public testimony and the conduct of public meetings, including measures to address disruptive conduct and limits on the time allotted to each speaker. For more information, see chapter 4.

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

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## Controversy

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

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

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

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

## Beyond the law — good business practices

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

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

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

- A legislative body's need to get its business done smoothly.
- The public's right to participate meaningfully in meetings, and to review documents used in decision-making at a relevant point in time.



- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- The right of the press to fully understand and communicate public agency decision-making.

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

### Achieving balance

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

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

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

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

### Historical note

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

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

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

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

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

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Updates to this publication responding to changes in the Brown Act or new court interpretations are available at <https://www.calcities.org/home/resources/open-government2>. A current version of the Brown Act may be found at <https://leginfo.ca.gov>.

### ENDNOTES

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



# Chapter 2

## LEGISLATIVE BODIES

What is a “legislative body” of a local agency? ..... 12

What is not a “legislative body” for purposes of the Brown Act? ..... 14

# Chapter 2

## LEGISLATIVE BODIES

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



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

A “legislative body” includes the following:

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

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

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

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

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

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.<sup>8</sup>
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.<sup>9</sup> Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates committees on budget and finance or on public safety that are not limited in duration or scope, those are standing committees subject to the Brown Act. Further, according to the California Attorney General, function over form controls. For example, a statement by the legislative body that the advisory committee “shall not exercise continuing subject matter jurisdiction” or the fact that the committee does not have a fixed meeting schedule is not determinative.<sup>10</sup> “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.<sup>11</sup> A majority of the members of a legislative body may attend an open and public meeting of a standing committee of that body, provided the members who are not part of the standing committee only observe.<sup>12</sup> For more information, see chapter 3.
- The governing body of any **private organization** either (1) created by the legislative body in order to exercise authority that may lawfully be delegated by such body to a private corporation, limited liability company, or other entity or (2) that receives agency funding and whose governing board includes a member of the legislative body of the local agency appointed by the legislative body as a full voting member of the private entity’s governing board.<sup>13</sup> These include some nonprofit corporations created by local agencies.<sup>14</sup> If a local agency contracts with a private firm for a service (for example, payroll, janitorial, or food services), the private firm is not covered by the Brown Act.<sup>15</sup> When a member of a legislative body sits on a board of a private organization as a private person and is not appointed by the legislative body, the board will not be subject to the Brown Act. Similarly, when the legislative body appoints someone other than one of its own members to such boards, the Brown Act does not apply. Nor does it apply when a private organization merely receives agency funding.<sup>16</sup>

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

- Q.** The local chamber of commerce is funded in part by the city. The mayor sits on the chamber's board of directors. Is the chamber board a legislative body subject to the Brown Act?
- A.** *Maybe. If the chamber's governing documents require the mayor to be on the board and the city council appoints the mayor to that position, the board is a legislative body. If, however, the chamber board independently appoints the mayor to its board, or the mayor attends chamber board meetings in a purely advisory capacity, it is not.*
- Q.** If a community college district board creates an auxiliary organization to operate a campus bookstore or cafeteria, is the board of the organization a legislative body?
- A.** *Yes. But if the district instead contracts with a private firm to operate the bookstore or cafeteria, the Brown Act would not apply to the private firm.*

- **Certain types of hospital operators.** A lessee of a hospital (or portion of a hospital) first leased under Health and Safety Code subsection 32121(p) after Jan. 1, 1994, which exercises "material authority" delegated to it by a local agency, whether or not such lessee is organized and operated by the agency or by a delegated authority.<sup>17</sup>

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

- A temporary advisory committee composed **solely of less than a quorum** of the legislative body that serves a limited or single purpose, that is not perpetual, and that will be dissolved once its specific task is completed is not subject to the Brown Act.<sup>18</sup> Temporary committees are sometimes called *ad hoc* committees, a term not used in the Brown Act. Examples include an advisory committee composed of less than a quorum created to interview candidates for a vacant position or to meet with representatives of other entities to exchange information on a matter of concern to the agency, such as traffic congestion.<sup>19</sup>
- Groups advisory to a single decision-maker or appointed by staff are not covered. The Brown Act applies only to committees created by formal action of the legislative body and not to committees created by others. A committee advising a superintendent of schools would not be covered by the Brown Act. However, the same committee, if created by formal action of the school board, would be covered.<sup>20</sup>

- Q.** A member of the legislative body of a local agency informally establishes an advisory committee of five residents to advise her on issues as they arise. Does the Brown Act apply to this committee?
- A.** *No, because the committee has not been established by formal action of the legislative body.*
- Q.** During a meeting of the city council, the council directs the city manager to form an advisory committee of residents to develop recommendations for a new ordinance. The city manager forms the committee and appoints its members; the committee is instructed to direct its recommendations to the city manager. Does the Brown Act apply to this committee?
- A.** *Possibly, because the direction from the city council might be regarded as a formal action of the body, notwithstanding that the city manager controls the committee.*

- Individual decision-makers who are not elected or appointed members of a legislative body are not covered by the Brown Act. For example, a disciplinary hearing presided over by a department head or a meeting of agency department heads is not subject to the Brown Act since such assemblies are not those of a legislative body.<sup>21</sup>
- Public employees, each acting individually and not engaging in collective deliberation on a specific issue, such as the drafting and review of an agreement, do not constitute a legislative body under the Brown Act, even if the drafting and review process was established by a legislative body.<sup>22</sup>
- County central committees of political parties are also not Brown Act bodies.<sup>23</sup>

Legal counsel for a governing body is not a member of the governing body, therefore, the Brown Act does not apply to them. But counsel should take care not to facilitate Brown Act violations by members of the governing body.<sup>24</sup>

## ENDNOTES

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.
- 2 Cal. Gov. Code, § 54952, subs. (a) and (b).
- 3 Cal. Gov. Code, § 54951; Cal. Health & Saf. Code, § 34173, subd. (g) (successor agencies to former redevelopment agencies subject to the Brown Act). But see Cal. Ed. Code § 35147, which exempts certain school councils and school site advisory committees from the Brown Act and imposes upon them a separate set of rules.
- 4 *Torres v. Board of Commissioners of Housing Authority of Tulare County* (1979) 89 Cal.App.3d 545, 549-550.
- 5 71 Ops.Cal.Atty.Gen. 96 (1988); 73 Ops.Cal.Atty.Gen. 1 (1990).
- 6 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354, 362.
- 7 Cal. Gov. Code, § 54952.1.
- 8 *Joiner v. City of Sebastopol* (1981) 125 Cal.App.3d 799, 804-805.
- 9 Cal. Gov. Code, § 54952, subd. (b)
- 10 79 Ops.Cal.Atty.Gen. 69 (1996).
- 11 *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793.
- 12 Cal. Gov. Code § 54952, subd. (c)(6).
- 13 Cal. Gov. Code, § 54952, subd. (c)(1). Regarding private organizations that receive local agency funding, the same rule applies to a full voting member appointed prior to February 9, 1996, who, after that date, is made a nonvoting board member by the legislative body. Cal. Gov. Code § 54952, subd. (c)(2).
- 14 Cal. Gov. Code, § 54952(c)(1)(A); *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District* (2001) 87 Cal.App.4th 862, 876; see also 85 Ops.Cal.Atty.Gen. 55 (2002).
- 15 *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 300 fn. 5.
- 16 "The Brown Act, Open Meetings for Local Legislative Bodies," California Attorney General's Office (2003), p. 7.

- 17 Cal. Gov. Code, § 54952, subd. (d).
- 18 Cal. Gov. Code, § 54952, subd. (b); see also *Freedom Newspapers, Inc. v. Orange County Employees Retirement System Board of Directors* (1993) 6 Cal.4th 821, 832.
- 19 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1129.
- 20 56 Ops.Cal.Atty.Gen. 14, 16-17 (1973).
- 21 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870, 878-879.
- 22 *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1513.
- 23 59 Ops.Cal.Atty.Gen. 162, 164 (1976).
- 24 *GFRCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal.App.5th 1295, 1323; *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95, 105 (a series of individual telephone calls between the agency attorney and the members of the body constituted a meeting).



# Chapter 3

## MEETINGS

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# Chapter 3

## MEETINGS



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

### Brown Act meetings

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

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

### Six exceptions to the meeting definition

The Brown Act creates six exceptions to the meeting definition:<sup>7</sup>

#### *Individual contacts*

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

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

## Conferences

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

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

## Community meetings

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

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

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

- Q.** The local chamber of commerce sponsors an open and public candidate debate during an election campaign. Three of the five agency members are up for reelection and all three participate. All of the candidates are asked their views on a controversial project scheduled for a meeting to occur just after the election. May the three incumbents answer the question?
- A.** Yes, because the chamber of commerce, not the city, is organizing the debate. The city should not sponsor the event or assign city staff to help organize or run the event. Also, the Brown Act does not constrain the incumbents from expressing their views regarding important matters facing the local agency as part of the political process the same as any other candidates. Finally, incumbents participating in the event should take care to limit their remarks to the program set by the chamber and safeguard due process by indicating they will keep an open mind regarding specific applications that might come before the council.
- Q.** May the three incumbents accept an invitation from the editorial board of a local paper to all candidates to meet as a group and answer questions about and/or debate city issues?
- A.** No, unlike the chamber of commerce event, this would not be allowed under the Brown Act because it is not an open and publicized meeting.

### Other legislative bodies

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

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

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

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

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

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

### Standing committees

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

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

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

**Q.** Can the legislative body establish multiple standing committees with partially overlapping jurisdiction?

**A.** *Yes. One result of this overlap in jurisdiction may be that three or more of the members of the legislative body ultimately end up discussing an issue as part of a standing committee meeting. This is allowed under the Brown Act provided each standing committee meeting is publicly noticed and no more than two of the five members discuss the issue at any given standing committee meeting.*

### **Social or ceremonial events**

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

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

### **Grand Jury Testimony**

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

### **Collective briefings**

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. Staff may provide written briefings (e.g., staff updates, emails from the city manager, confidential memos from the city attorney) to the full legislative body, but apart from privileged memos, the written materials may be subject to disclosure as public records as discussed in chapter 4.

### **Retreats, trainings, and workshops of legislative bodies**

Gatherings by a majority of legislative body members at the legislative body's retreats, study sessions, trainings, or workshops are subject to the requirements of the Brown Act. This is the case whether the gathering focuses on long-range agency planning, discussion of critical local issues, satisfying state-mandated ethics training requirements, or team building and group dynamics.<sup>11</sup>



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

### Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings include only a portion of a legislative body, but eventually they comprise a majority. The Brown Act provides that “[a] majority of the members of a legislative body shall not, outside a meeting ... use a series of communications of any kind, directly or through

intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”<sup>12</sup> The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

The serial meeting may occur by either a “daisy chain” or a “hub and spoke” sequence. In the daisy chain scenario, Member A contacts Member B, Member B contacts Member C, Member C contacts Member D, and so on until a quorum has discussed, deliberated, or taken action on an item within the legislative body’s subject matter jurisdiction. The hub and spoke process involves at least two scenarios. In the first scenario, Member A (the hub) sequentially contacts Members B, C, D, and so on (the spokes) until a quorum has been contacted. In the second scenario, a staff member (the hub), functioning as an intermediary for the legislative body

or one of its members, communicates with a majority of members (the spokes) one by one for discussion, deliberation, or a decision on a proposed action.<sup>13</sup> Another example of a serial meeting is when a chief executive officer (the hub) briefs a majority of members (the spokes) prior to a formal meeting and, in the process, information about the members’ respective views is revealed. Each of these scenarios violates the Brown Act.

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

The Brown Act is violated, however, if several one-on-one meetings or conferences lead to a discussion, deliberation, or action by a majority. In one case, a violation occurred when a quorum



Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

of a city council, by a letter that had been circulated among members outside of a formal meeting, directed staff to take action in an eminent domain proceeding.<sup>15</sup>

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

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

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

**“Well, I’ve got Bradley and Cohen lined up and another vote leaning. With you, I’d be over the top.”**

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

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

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

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

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

**“Glad to be of assistance,” replied the planning director. “I’m sure Council Member Jones is OK with these changes. How are you leaning?”**

**“Well,” said Council Member Kim, “I’m leaning toward approval. I know that two of my colleagues definitely favor approval.”**

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

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

- Q.** Various social media platforms and websites include forums where agency employees and officials can discuss issues of local agency business. Members of the legislative body participate regularly. Does this scenario present a potential for violation of the Brown Act?
- A.** *Yes, because it is a technological device that may serve to allow for a majority of members to discuss, deliberate, or take action on matters of agency business.*
- Q.** A member of a legislative body contacts two other members on a five-member body relative to scheduling a special meeting. Is this an illegal serial meeting?
- A.** *No, the Brown Act expressly allows a majority of a body to call a special meeting, though the members should avoid discussing the merits of what is to be taken up at the meeting.*

Particular care should be exercised when staff briefings of legislative body members occur by email because of the ease of using the “reply all” option that may inadvertently result in a Brown Act violation. Staff should consider using the “bcc” (blind carbon copy) option when addressing an email to multiple members of the legislative body and remind recipients not to “reply all.”

Social media should also be used with care. A member of the legislative body cannot respond directly to any communication on an internet-based social media platform that is made, posted, or shared by any other member of the legislative body. This applies to matters within the subject matter jurisdiction of the legislative body. For example, if one member of a legislative body “likes” a social media post of one other member of the same body, that could violate the Brown Act, depending on the nature of the post.<sup>19</sup>

Finally, electronic communications (such as text messaging) among members of a legislative body during a public meeting should be discouraged. If such communications are sent to a majority of members of the body, either directly or through an intermediary, on a matter on the meeting agenda, that could violate the Brown Act. Electronic communications sent to less than a majority of members of the body during a quasi-judicial proceeding could potentially raise due process concerns, even if not per se prohibited by the Brown Act. Additionally, some legislative bodies have rules governing electronic communications during meetings of the legislative body and how their members should proceed if they receive a communication on an agenda item that is not part of the record or not part of an agenda packet.

### **Informal gatherings**

Members of legislative bodies are often tempted to mix business with pleasure — for example, by holding a post-meeting gathering. Informal gatherings at which local agency business is discussed or transacted violate the law if they are not conducted in conformance with the Brown Act.<sup>20</sup> A gathering at which a quorum of the legislative body discusses matters within their jurisdiction violates the Brown Act even if that gathering occurs in a public place. The Brown Act is not satisfied by public visibility alone. It also requires public notice and an opportunity to attend, hear, and participate.

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

*A gathering like this would not violate the Brown Act if board members scrupulously avoided talking about irrigation district issues — which might be difficult. This kind of situation should be avoided. The public is unlikely to believe the board members could meet regularly without discussing public business. A newspaper executive’s presence does not lessen the potential for a violation of the Brown Act.*

### Technological conferencing

Except for certain non-substantive purposes, such as scheduling a special meeting, a conference call including a majority of the members of a legislative body is an unlawful meeting. But in an effort to keep up with modern technologies, the Brown Act specifically allows a legislative body to use any type of teleconferencing to meet, receive public comment and testimony, deliberate, or conduct a closed session.<sup>21</sup> While the Brown Act contains specific requirements for conducting a teleconference, the decision to use teleconferencing is entirely discretionary with the body. No person has a right under the Brown Act to have a meeting by teleconference.

Teleconference is defined as “a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both.”<sup>22</sup> In addition to the specific requirements relating to teleconferencing, the meeting must comply with all provisions of the Brown Act otherwise applicable. The Brown Act contains the following teleconferencing requirements:<sup>23</sup>

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



Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

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

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

Until Jan. 1, 2026, teleconferencing may also be used on a limited basis where a member indicates their need to participate remotely for “just cause” (e.g., childcare or a contagious illness) or due to

“emergency circumstances” (e.g., a physical or family medical emergency). This teleconferencing option has extremely detailed requirements, and careful review is needed. If the City experiences a technical issue that prevents members of the public from viewing the meeting and/or offering comments virtually, then no further action can be taken until the technical issue is resolved.<sup>24</sup>

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

### Location of meetings

The Brown Act generally requires all regular and special meetings of a legislative body, including retreats and workshops, to be held within the boundaries of the territory over which the local agency exercises jurisdiction.<sup>25</sup>

An open and publicized meeting of a legislative body may be held outside of agency boundaries if the purpose of the meeting is one of the following:<sup>26</sup>

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

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

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

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



- Meet with elected or appointed federal or California officials when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.
- Meet in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
- Visit the office of its legal counsel for a closed session on pending litigation when to do so would reduce legal fees or costs.<sup>27</sup>

In addition, the governing board of a school or community college district may hold meetings outside of its boundaries to attend a conference on nonadversarial collective bargaining techniques, interview candidates for school district superintendent, or interview a potential employee from another district.<sup>28</sup> A school board may also interview members of the public residing in another district if the board is considering employing that district's superintendent.

Similarly, meetings of a joint powers authority can occur within the territory of at least one of its member agencies, and a joint powers authority with members throughout the state may meet anywhere in the state.<sup>29</sup>

Finally, if a fire, flood, earthquake, or other emergency makes the usual meeting place unsafe, the presiding officer can designate another meeting place for the duration of the emergency. News media that have requested notice of meetings must be notified of the designation by the most rapid means of communication available.<sup>30</sup> State law has also allowed for virtual meetings under certain emergency situations.<sup>31</sup>

## ENDNOTES

- 1 Cal. Gov. Code, § 54952.2, subd. (a).
- 2 *Wilson v. San Francisco Municipal Railway* (1973) 29 Cal.App.3d 870.
- 3 Cal. Gov. Code, § 54954, subd. (a).
- 4 Cal. Gov. Code, § 54956.
- 5 Cal. Gov. Code, § 54956.5.
- 6 Cal. Gov. Code, § 54955.
- 7 Cal. Gov. Code, § 54952.2, subd. (c).
- 8 Cal. Gov. Code, § 54952.2, subd. (c)(4).
- 9 Cal. Gov. Code, § 54952.2, subd. (c)(6). See 81 Ops.Cal.Atty.Gen. 156 (1998).
- 10 Cal. Gov. Code, § 54953.1.
- 11 "The Brown Act," California Attorney General (2003), p. 10.
- 12 Cal. Gov. Code, § 54952.2, subd. (b)(1).
- 13 *Stockton Newspapers, Inc. v. Redevelopment Agency of the City of Stockton* (1985) 171 Cal.App.3d 95.
- 14 Cal. Gov. Code, § 54952.2, subd. (b)(2).
- 15 *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518.
- 16 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.
- 17 Cal. Gov. Code, § 54957.5, subd. (a).
- 18 Cal. Gov. Code, § 54952.2, subd. (b)(2).
- 19 Cal. Gov. Code, § 54952.2, subd. (b)(3).

- 20 Cal. Gov. Code, § 54952.2; 43 Ops.Cal.Atty.Gen. 36 (1964).
- 21 Cal. Gov. Code, § 54953, subd. (b)(1).
- 22 Cal. Gov. Code, § 54953, subd. (b)(4).
- 23 Cal. Gov. Code, § 54953. Until Jan. 1, 2024, the legislative body could use teleconferencing “during a proclaimed state of emergency” by the Governor in specified circumstances, and teleconference locations were exempt from certain requirements, such as identification in and posting of the agenda.
- 24 Cal Gov. Code, § 54953, subd. (f) (which will become Govt. §54953(e) as of Jan. 1, 2024).
- 25 Cal. Gov. Code, § 54954, subd. (b).
- 26 Cal. Gov. Code, § 54954, subd. (b)(1)-(7).
- 27 94 Ops.Cal.Atty.Gen. 15 (2011).
- 28 Cal. Gov. Code, § 54954, subd. (c).
- 29 Cal. Gov. Code, § 54954, subd. (d).
- 30 Cal. Gov. Code, § 54954, subd. (e).
- 31 Cal. Gov. Code, § 54953, subd. (e) (exp. January 1, 2026).



# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION

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# Chapter 4

## AGENDAS, NOTICES, AND PUBLIC PARTICIPATION



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

### Agendas for regular meetings

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

The agenda must be posted at least 72 hours before the regular meeting in a location “freely accessible to members of the public.”<sup>1</sup> The courts have not definitively interpreted the “freely accessible” requirement. The California Attorney General has interpreted this

provision to require posting in a location open and accessible to the public 24 hours a day during the 72-hour period, but any of the 72 hours may fall on a weekend.<sup>2</sup> This provision may be satisfied by posting on a touch screen electronic kiosk accessible without charge to the public 24 hours a day during the 72-hour period.<sup>3</sup> While posting an agenda on an agency’s internet website will not, by itself, satisfy the “freely accessible” requirement since there is no universal access to the internet, an agency has a supplemental obligation to post the agenda on its website if (1) the local agency has a website and (2) the legislative body whose meeting is the subject of the agenda is either (a) a governing body or (b) has members that are compensated, with one or more members that are also members of a governing body.<sup>4</sup>

- Q.** May the meeting of a governing body go forward if its agenda was either inadvertently not posted on the city’s website or if the website was not operational during part or all of the 72-hour period preceding the meeting?
- A.** *At a minimum, the Brown Act calls for “substantial compliance” with all agenda posting requirements, including posting to the agency website.<sup>5</sup> Should website technical difficulties arise, seek a legal opinion from your agency attorney. The California Attorney General has opined that technical difficulties that cause the website agenda to become inaccessible for a portion of the 72 hours preceding a meeting do not automatically or inevitably lead to a Brown Act violation, provided the agency can demonstrate substantial compliance.<sup>6</sup> This inquiry requires a fact-specific examination of whether the agency or its legislative body made “reasonably effective efforts to notify interested persons of a public meeting” through online posting and other available means.<sup>7</sup> The Attorney General’s opinion suggests that this examination would include an evaluation of how long a technical problem persisted, the efforts made to correct the problem or otherwise ensure that the public was informed, and the actual effect the problem had on public*

*awareness, among other factors.<sup>8</sup> For these reasons, obvious website technical difficulties might not require cancellation of a meeting, provided that the agency meets all other Brown Act posting requirements and the agenda is available on the website once the technical difficulties are resolved.*

The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”<sup>9</sup> For a discussion of descriptions for open and closed-session agenda items, see chapter 5. Special care should be made to describe on the agenda each distinct action to be taken by the legislative body, while an overbroad description of a “project” must be avoided if the “project” is actually a set of distinct actions, in which case each action must be listed separately on the agenda.<sup>10</sup> For example, the listing of an “initiative measure” alone on an agenda was found insufficient where the agency was also deciding whether to accept a gift from the measure proponent to pay for the election.<sup>11</sup>

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

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

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

Are these descriptions adequate?

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

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

Is this permissible?

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

A brief general description may not be sufficient for closed-session agenda items. The Brown Act provides safe harbor language for the various types of permissible closed sessions.<sup>12</sup> Substantial compliance with the safe harbor language is recommended to protect legislative bodies and elected officials from legal challenges.

### **Mailed agenda upon written request**

The legislative body, or its designee, must mail a copy of the agenda or, if requested, the entire agenda packet, to any person who has filed a written request for such materials. These copies shall be mailed at the time the agenda is posted or upon distribution to all, or a majority of all, of the members of the legislative body, whichever occurs first. If the local agency has an internet website, this requirement can be satisfied by emailing a copy of, or website link to, the agenda or agenda packet if the person making the request asks for it to be emailed. Further, if requested, these materials must be made available in appropriate alternative formats to persons with disabilities.

A request for notice is valid for one calendar year and renewal requests must be filed following January 1 of each year. The legislative body may establish a fee to recover the cost of providing the service. Failure of the requesting person to receive the agenda does not constitute grounds for invalidation of actions taken at the meeting.<sup>13</sup>



### Notice requirements for special meetings

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

The notice must state the time and place of the meeting as well as all business to be transacted or discussed. It is recommended that the business to be transacted or discussed be described in the same manner that an item for a regular meeting would be described on the agenda, that is, with a brief general description. Some items must appear on a regular, not special, meeting agenda (e.g., general law city adoption of an ordinance or consideration of local agency executive compensation).<sup>14</sup>

As noted above, closed session items should be described in accordance with the Brown Act's safe harbor provisions to protect legislative bodies and elected officials from challenges of noncompliance with notice requirements.

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

members that are also members of a governing body.<sup>15</sup>

### Notices and agendas for adjourned and continued meetings and hearings

A regular or special meeting can be adjourned and re-adjourned to a time and place specified in the order of adjournment.<sup>16</sup> If no time is stated, the meeting is continued to the hour for regular meetings. Whoever is present (even if they are less than a quorum) may so adjourn a meeting; if no member of the legislative body is present, the clerk or secretary may adjourn the meeting. If a meeting is adjourned for less than five calendar days, no new agenda need be posted so long as a new item of business is not introduced.<sup>17</sup> A copy of the order of adjournment must be posted within 24 hours after the adjournment, at or near the door of the place where the meeting was held.

A hearing can be continued to a subsequent meeting. The process is the same as for continuing adjourned meetings, except that if the hearing is continued to a time less than 24 hours away, a copy of the order or notice of continuance must be posted immediately following the meeting.<sup>18</sup>

## Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.<sup>19</sup> News media that have requested written notice of special meetings must be notified by telephone at least one hour in advance of an emergency meeting, and all telephone numbers provided in that written request must be tried. If telephones are not working, the notice requirements are deemed waived. However, the news media must be notified as soon as possible of the meeting and any action taken.

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

## Notice of compensation for simultaneous or serial meetings

A legislative body that has convened a meeting and whose membership constitutes a quorum of another legislative body, may convene a simultaneous or serial meeting of the other legislative body only after a clerk or member of the convened legislative body orally announces (1) the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the meeting of the other legislative body; and (2) that the compensation or stipend is provided as a result of convening the meeting of that body.<sup>20</sup>

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

## Educational agency meetings

The Education Code contains some special agenda and special meeting provisions.<sup>21</sup> However, they are generally consistent with the Brown Act. An item is probably void if not posted.<sup>22</sup> A school district board must also adopt regulations to make sure the public can place matters affecting the district's business on meeting agendas and can address the board on those items.<sup>23</sup>

## Notice requirements for tax or assessment meetings and hearings

The Brown Act prescribes specific procedures for adoption by a city, county, special district, or joint powers authority of any new or increased tax or assessment imposed on businesses.<sup>24</sup> Although written broadly, these Brown Act provisions do not apply to new or increased real property taxes or assessments, as those are governed by the California Constitution, Article XIII C or XIII D, enacted by Proposition 218. At least one public meeting must be held to allow public testimony on the tax or assessment. In addition, there must also be at least 45 days notice of a public hearing at which the legislative body proposes to enact or increase the tax or assessment. Notice of the public meeting and public hearing must be provided at the same time and in the same document. The public notice relating to general taxes must be provided by newspaper publication. The public notice relating to new or increased business assessments must be provided through a



mailing to all business owners proposed to be subject to the new or increased assessment. The agency may recover the reasonable costs of the public meetings, hearings, and notice.

The Brown Act exempts certain fees, standby or availability charges, recurring assessments, and new or increased assessments that are subject to the notice and hearing requirements of the Constitution.<sup>25</sup> As a practical matter, the Constitution's notice requirements have preempted this section of the Brown Act.

### Non-agenda items

The Brown Act generally prohibits any action or discussion of items not on the posted agenda. However, there are three specific situations in which a legislative body can act on an item not on the agenda:<sup>26</sup>

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

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

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

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

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

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

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

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

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

## Responding to the public

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

While the Brown Act does not allow discussion or action on items not on the agenda, it does allow members of the legislative body, or its staff, to “briefly respond” to comments or questions from members of the public, provide a reference to staff or other resources for factual information, or direct staff to place the issue on a future agenda. In addition, even without a comment from the public, a legislative body member or a staff member may ask for information, request a report back, request to place a matter on the agenda for a subsequent meeting (subject to the body’s rules or procedures), ask a question for clarification, make a brief announcement, or briefly report on their own activities.<sup>27</sup> However, caution should be used to avoid any discussion or action on such items.



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

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

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

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

### The right to attend and observe meetings

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

Members of the public cannot be required to register their names, provide other information, complete a questionnaire, or otherwise "fulfill any condition precedent" to attending a meeting. Any attendance list, questionnaire, or similar document posted at or near the entrance to the meeting room or circulated at a meeting must clearly state that its completion is voluntary and that all persons may attend whether or not they fill it out.<sup>28</sup>

No meeting can be held in a facility that prohibits attendance based on race, religion, color, national origin, ethnic group identification, age, sex, sexual orientation, or disability, or that is inaccessible to the disabled. Nor can a meeting be held where the public must make a payment or purchase in order to be present.<sup>29</sup> This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.<sup>30</sup>

While a legislative body may use teleconferencing in connection with a meeting, the public must be given notice of and access to the teleconference location. Members of the public must be able to address the legislative body from the teleconference location.<sup>31</sup>

Action by secret ballot, whether preliminary or final, is flatly prohibited.<sup>32</sup>

All actions taken by the legislative body in open session, and the vote of each member thereon, must be disclosed to the public at the time the action is taken.<sup>33</sup>

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

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

The legislative body may remove persons from a meeting who willfully interrupt or disrupt proceedings.<sup>34</sup> Ejection is justified only when audience members actually disrupt the proceedings,<sup>35</sup> or, alternatively, if the presiding member of the legislative body warns a person that their behavior is disruptive and that continued disruption may result in their removal (but no prior warning is required if there is a use of force or true threat of force).<sup>36</sup> If order cannot be restored after ejecting disruptive persons, the meeting room may be cleared. Members of the news media who have not participated in the disturbance must be allowed to continue to attend the meeting. The legislative body may establish a procedure to readmit an individual or individuals not responsible for the disturbance.<sup>37</sup>

## Records and recordings

The public has the right to review agendas and other writings distributed by any person to a majority of the legislative body in connection with a matter subject to discussion or consideration at a meeting. Except for privileged documents, those materials are public records and must be made available upon request without delay.<sup>38</sup> A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.<sup>39</sup>

- Q.** In connection with an upcoming hearing on a discretionary use permit, counsel for the legislative body transmits a memorandum to all members of the body outlining the litigation risks in granting or denying the permit. Must this memorandum be included in the packet of agenda materials available to the public?
- A.** *No. The memorandum is a privileged attorney-client communication.*
- Q.** In connection with an agenda item calling for the legislative body to approve a contract, staff submits to all members of the body a financial analysis explaining why the terms of the contract favor the local agency. Must this memorandum be included in the packet of agenda materials available to the public?
- A.** *Yes. The memorandum has been distributed to the majority of the legislative body, relates to the subject matter of a meeting, and is not a privileged communication.*

A legislative body may discuss or act on some matters without considering written materials. But if writings are distributed to a majority of a legislative body in connection with an agenda item, they must also be available to the public. A nonexempt or otherwise non-privileged writing distributed to a majority of the legislative body less than 72 hours before the meeting must be made available for inspection at the time of distribution at a public office or location designated for that purpose, and the agendas for all meetings of the legislative body must include the address of this office or location.<sup>40</sup> The location designated for public inspection must be open to the public, not a locked or closed office. Alternatively, the documents can be posted on the city's website for public review if statutory requirements are met.<sup>41</sup>

A writing distributed during a meeting must be made public:

- At the meeting if prepared by the local agency or a member of its legislative body.
- After the meeting if prepared by some other person.<sup>42</sup>

This requirement does not prevent assessing a fee or deposit for providing a copy of a public record pursuant to the California Public Records Act except where required to accommodate persons with disabilities.<sup>43</sup>

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency is subject to the California Public Records Act; however, it may be erased or destroyed 30 days after the taping or recording. Any inspection of a video or tape recording is to be provided without charge on a video or tape player made available by the local agency.<sup>44</sup> The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.<sup>45</sup>

In addition, the public is specifically allowed to use audio or videotape recorders or still or motion picture cameras at a meeting to record meetings of legislative bodies, absent a reasonable finding by the body that noise, illumination, or obstruction of view caused by recorders or cameras would persistently disrupt the proceedings.<sup>46</sup>

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

Similarly, a legislative body cannot prohibit or restrict the public broadcast of its open and public meetings without making a reasonable finding that the noise, illumination, or obstruction of view would persistently disrupt the proceedings.<sup>47</sup>

### The public's right to speak during a meeting

Every agenda for a regular meeting must allow members of the public to speak on any item of interest, as long as the item is within the subject matter jurisdiction of the legislative body. Further, the public must be allowed to speak on a specific item of business before or during the legislative body's consideration of it.<sup>48</sup>

- Q.** Must the legislative body allow members of the public to show videos or make a PowerPoint presentation during the public comment part of the agenda, as long as the subject matter is relevant to the agency and is within the established time limit?
- A.** *Probably, although the agency is under no obligation to provide equipment.*

Moreover, the Brown Act, as well as case law, prevents legislative bodies from prohibiting public criticism of policies, procedures, programs, or services of the agency or the acts or omissions of the legislative body itself.<sup>49</sup> However, this prohibition does not provide immunity for defamatory statements.<sup>50</sup>

- Q.** May the presiding officer prohibit a member of the audience from publicly criticizing an agency employee by name during public comments?
- A.** *No, as long as the criticism pertains to job performance.*
- Q.** During the public comment period of a regular meeting of the legislative body, a resident urges the public to support and vote for a candidate vying for election to the body. May the presiding officer gavel the speaker out of order for engaging in political campaign speech?
- A.** *There is no case law on this subject. Some would argue that purely campaign issues are outside the subject matter jurisdiction of the body within the meaning of Section 54954.3(a). Others take the view that the speech must be allowed under paragraph (c) of that section where relevant to the governing of the agency and an implicit criticism of the incumbents' performance of city business.*

The legislative body may adopt reasonable regulations, including a limit on the total time permitted for public comment and a limit on the time permitted per speaker.<sup>51</sup> Such regulations should be enforced fairly and without regard to speakers' viewpoints. The legislative body has discretion to modify its regulations regarding time limits on public comment if necessary. For example, the time limit could be shortened to accommodate a lengthy agenda or lengthened to allow additional time for discussion on a complicated matter.<sup>52</sup>

The public does not need to be given an opportunity to speak on an item that has already been considered by a committee made up exclusively of members of the legislative body at a regular (but not special) public meeting if all interested members of the public had the opportunity to

speak on the item before or during its consideration, and if the item has not been substantially changed.<sup>53</sup>

Notices and agendas for special meetings must also give members of the public the opportunity to speak before or during consideration of an item on the agenda but need not allow members of the public an opportunity to speak on other matters within the jurisdiction of the legislative body.<sup>54</sup>

## ENDNOTES

- 1 Cal. Gov. Code, § 54954.2, subd. (a)(1).
- 2 78 Ops.Cal.Atty.Gen. 327 (1995).
- 3 88 Ops.Cal.Atty.Gen. 218 (2005).
- 4 Cal. Gov. Code, §§ 54954.2, subd. (a)(1) and 54954.2, subd. (d).
- 5 Cal. Gov. Code, § 54960.1, subd. (d)(1).
- 6 99 Ops.Cal.Atty.Gen. 11 (2016).
- 7 *North Pacifica LLC v. California Coastal Commission* (2008) 166 Cal.App.4th 1416, 1432.
- 8 99 Ops.Cal.Atty.Gen. 11 (2016).
- 9 Cal. Gov. Code, § 54954.2, subd. (a)(1).
- 10 *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167 (legislative body's approval of California Environmental Quality Act [CEQA] action [mitigated negative declaration] without specifically listing it on the agenda violates the Brown Act, even if the agenda generally describes the development project that is the subject of the CEQA analysis). See also *GI Industries v. City of Thousand Oaks* (2022) 84 Cal.App.5th 814 (depublished) (Brown Act requires CEQA finding of exemption to be listed on agenda items that are projects under CEQA).
- 11 *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194.
- 12 Cal. Gov. Code, § 54954.5.
- 13 Cal. Gov. Code, § 54954.1.
- 14 Cal. Gov. Code, §§ 36934; 54956, subd. (b).
- 15 Cal. Gov. Code, § 54956, subds. (a) and (c).
- 16 Cal. Gov. Code, § 54955.
- 17 Cal. Gov. Code, § 54954.2, subd. (b)(3).
- 18 Cal. Gov. Code, § 54955.1.
- 19 Cal. Gov. Code, § 54956.5.
- 20 Cal. Gov. Code, § 54952.3.
- 21 Cal. Edu. Code, §§ 35144, 35145, and 72129.
- 22 *Carlson v. Paradise Unified School District* (1971) 18 Cal.App.3d 196.
- 23 Cal. Edu. Code, § 35145.5
- 24 Cal. Edu. Code, § 54954.6
- 25 See Cal. Const. Art. XIII C, XIII D; Cal. Gov. Code, § 54954.6, subd. (h).
- 26 Cal. Gov. Code, § 54954.2, subd. (b).
- 27 Cal. Gov. Code, § 54954.2, subd. (a)(2); *Cruz v. City of Culver City* (2016) 2 Cal.App.5th 239 (six-minute colloquy on non-agenda item with staff answering questions and advising that matter could be placed on future agenda fell within exceptions to discussing or acting upon non-agenda items).



- 28 Cal. Gov. Code, § 54953.3.
- 29 Cal. Gov. Code, § 54961, subd. (a); Cal. Gov. Code, § 11135, subd. (a).
- 30 Cal. Gov. Code, § 54952.2, subd. (c)(2).
- 31 Cal. Gov. Code, § 54953, subd. (b).
- 32 Cal. Gov. Code, § 54953, subd. (c).
- 33 Cal. Gov. Code, § 54953, subd. (c)(2).
- 34 Cal. Gov. Code, §§ 54957.9, 54957.95.
- 35 *Norse v. City of Santa Cruz* (9th Cir. 2010) 629 F.3d 966 (silent and momentary Nazi salute directed toward mayor is not a disruption); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800 (city council may not prohibit “insolent” remarks by members of the public absent actual disruption); but see *Kirkland v. Luken* (S.D. Ohio 2008) 536 F.Supp.2d 857 (finding no First Amendment violation by mayor for turning off microphone and removing speaker who used foul and inflammatory language that was deemed as “likely to incite the members of the audience during the meeting, cause disorder, and disrupt the meeting”).
- 36 Cal. Gov. Code, § 54957.95.
- 37 Cal. Gov. Code, § 54957.9.
- 38 Cal. Gov. Code, § 54957.5.
- 39 Cal. Gov. Code, § 54957.5, subd. (d).
- 40 Cal. Gov. Code, § 54957.5(b); see also *Sierra Watch v. Placer County* (2021) 69 Cal.App.5th 1.
- 41 Cal. Gov. Code § 54957.5.
- 42 Cal. Gov. Code, § 54957.5, subd. (c).
- 43 Cal. Gov. Code, § 54957.5, subd. (d).
- 44 Cal. Gov. Code, § 54953.5, subd. (b).
- 45 Cal. Gov. Code, § 54957.5, subd. (d).
- 46 Cal. Gov. Code, § 54953.5, subd. (a).
- 47 Cal. Gov. Code, § 54953.6.
- 48 Cal. Gov. Code, § 54954.3, subd. (a).
- 49 Cal. Gov. Code, § 54954.3, subd. (c); *Acosta v. City of Costa Mesa* (9th Cir. 2013) 718 F.3d 800.
- 50 Cal. Gov. Code, § 54954.3, subd. (c).
- 51 *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150 (public comment time limit of three minutes for each speaker did not violate First Amendment).
- 52 Cal. Gov. Code, § 54954.3, subd. (b); *Chaffee v. San Francisco Public Library Commission* (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992).
- 53 Cal. Gov. Code, § 54954.3, subd. (a); *Preven v. City of Los Angeles* (2019) 32 Cal.App.5th 925.
- 54 Cal. Gov. Code, § 54954.3, subd. (a).



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# Chapter 5

## CLOSED SESSIONS

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



As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.<sup>2</sup> The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. However, there is no prohibition in putting overlapping exceptions on an agenda in order to provide an opportunity for more robust closed session discussions. As an example, a city council cannot give direction to the city manager about a property

negotiation during a performance evaluation exception. However, if both real property negotiation and performance evaluation exceptions are on the agenda, those discussions might be conducted. Similarly, a board of police commissioners cannot meet in closed session to provide general policy guidance to a police chief, even though some matters are sensitive and the commission considers their disclosure contrary to the public interest.<sup>3</sup>

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

### Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.<sup>5</sup> An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly put on the agenda as a

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

closed session item or unless it is properly added as a closed-session item by a two-thirds vote of the body after making the appropriate urgency findings.<sup>6</sup>

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

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda, and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.<sup>8</sup> The legislative body must take public comment on the closed session item before convening in a closed session.

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

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

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

## Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.<sup>13</sup> The rules that apply to holding a litigation closed session involve complex, technical definitions and procedures. Essentially, a closed session can be held by the body to confer with, or receive advice from, its legal counsel when open discussion would prejudice the position of the local agency in litigation in which the agency is, or could become, a party.<sup>14</sup> The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body’s conferring with its own legal counsel and required support staff.<sup>15</sup> For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.<sup>16</sup>

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

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

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

### *Existing litigation*

- Q.** May the legislative body agree to settle a lawsuit in a properly noticed closed session without placing the settlement agreement on an open session agenda for public approval?
- A.** *Yes, but the settlement agreement is a public document and must be disclosed on request. Furthermore, a settlement agreement cannot commit the agency to matters that are required to have public hearings.*<sup>19</sup>

Existing litigation includes any adjudicatory proceedings before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator. The clearest situation in which a closed session is authorized is when the local agency meets with its legal counsel to discuss a pending matter that has been filed in a court or with an administrative agency and names the local

agency as a party. The legislative body may meet under these circumstances to receive updates on the case from attorneys, participate in developing strategy as the case develops, or consider alternatives for resolution of the case. Generally, an agreement to settle litigation may be approved in closed session. However, an agreement to settle litigation cannot be approved in closed session if it commits the city to take an action that is required to have a public hearing.<sup>20</sup>

### *Anticipated exposure to litigation against the local agency*

Closed sessions are authorized for legal counsel to inform the legislative body of a significant exposure to litigation against the local agency, but only if based on "existing facts and circumstances" as defined by the Brown Act.<sup>21</sup> The legislative body may also meet under this exception to determine whether a closed session is authorized based on information provided by legal counsel or staff. In general, the "existing facts and

circumstances" must be publicly disclosed unless they are privileged written communications or not yet known to a potential plaintiff. If an agency receives a documented threat of litigation, and intends to discuss that matter in closed session, the record of a litigation threat must be included in the body's agenda packet.<sup>22</sup>



### **Anticipated initiation of litigation by the local agency**

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

Certain actions must be reported in open session at the same meeting following the closed session. Other actions, such as when final approval rests with another party or the court, may be announced when they become final and upon inquiry of any person.<sup>23</sup> Each agency attorney should be aware of and make the disclosures that are required by the particular circumstances.

### **Real estate negotiations**

A legislative body may meet in closed session with its negotiator to discuss the purchase, sale, exchange, or lease of real property by or for the local agency. A "lease" includes a lease renewal or renegotiation. The purpose is to grant authority to the legislative body's negotiator on price and terms of payment.<sup>24</sup> Caution should be exercised to limit discussion to price and terms of payment without straying to other related issues, such as site design, architecture, or other aspects of the project for which the transaction is contemplated.<sup>25</sup>

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

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

The agency's negotiator may be a member of the legislative body itself. Prior to the closed session, or on the agenda, the legislative body must identify its negotiators, the real property that the negotiations may concern,<sup>26</sup> and the names of the parties with whom its negotiator may negotiate.<sup>27</sup>

After real estate negotiations are concluded, the approval and substance of the agreement must be publicly reported. If its own approval makes the agreement final, the body must report in open session at the public meeting during which the closed session is held. If final approval rests with another party, the local agency must report the approval and the substance of the agreement upon inquiry by any person as soon as the agency is informed of it.<sup>28</sup>

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

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

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

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

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

### Public employment

The Brown Act authorizes a closed session “to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee.”<sup>29</sup> The purpose of this exception — commonly referred to as the “personnel exception” — is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the legislative body; thus, it is restricted to discussing individuals, not general personnel policies.<sup>30</sup> The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.<sup>31</sup> That authority may be delegated to a subsidiary appointed body.<sup>32</sup>

An employee must be given at least 24 hours’ notice of any closed session convened to hear specific complaints or charges against them. This occurs when the legislative body is reviewing evidence, which could include live testimony, and adjudicating conflicting testimony offered as evidence. A legislative body may examine (or exclude) witnesses,<sup>33</sup> and the California Attorney General has opined that, when an affected employee and advocate have an official or essential role to play, they may be permitted to participate in the closed session.<sup>34</sup> The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.<sup>35</sup> If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.<sup>36</sup>

However, an employee is not entitled to notice and a hearing where the purpose of the closed session is to consider a performance evaluation. The Attorney General and the courts have determined that personnel performance evaluations do not constitute complaints and charges, which are more akin to accusations made against a person.<sup>37</sup>

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

Correct labeling of the closed session on the agenda is critical. A closed session agenda that identified discussion of an employment contract was not sufficient to allow dismissal of an employee.<sup>38</sup> An incorrect agenda description can result in invalidation of an action and much embarrassment.

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

Elected officials, appointees to the governing body or subsidiary bodies, and independent contractors other than those discussed above are not employees for purposes of the personnel exception.<sup>39</sup> Action on individuals who are not “employees” must also be public — including discussing and voting on appointees to committees, debating the merits of independent contractors, or considering a complaint against a member of the legislative body itself.

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

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

Any closed session action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee must be reported at the public meeting during which the closed session is held. That report must identify the title of the position, but not the names of all persons considered for an employment position.<sup>40</sup> However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.<sup>41</sup>

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

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

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

## Labor negotiations

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

A legislative body may meet in closed session to instruct its bargaining representatives, which may be one or more of its members,<sup>42</sup> on employee salaries and fringe benefits for both represented (“union”) and unrepresented employees. For represented employees, it may also consider working conditions that by law require negotiation. For the purpose of labor negotiation closed sessions, an “employee” includes an officer or an independent contractor who functions as an officer or an employee, but independent contractors who do not serve in the capacity of an officer or employee are not covered by this closed session exception.<sup>43</sup>

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

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

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

During its discussions with representatives on salaries and fringe benefits, the legislative body may discuss available funds and funding priorities, but only to instruct its representative. The body may also meet in closed session with a conciliator who has intervened in negotiations.<sup>44</sup>

The approval of an agreement concluding labor negotiations with represented employees must be reported after the agreement is final and has been accepted or ratified by the other party. The report must identify the item approved and the other party or parties to the negotiation.<sup>45</sup> The labor closed sessions specifically cannot include final action on proposed compensation of one or more unrepresented employees.

### Labor negotiations — school and community college districts

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

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

1. A negotiating session with a recognized or certified employee organization.
2. A meeting of a mediator with either side.
3. A hearing or meeting held by a fact finder or arbitrator.
4. A session between the board and its bargaining agent, or the board alone, to discuss its position regarding employee working conditions and instruct its agent.<sup>46</sup>

Public participation under the Rodda Act also takes another form.<sup>47</sup> All initial proposals of both sides must be presented at public meetings and are public records. The public must be given reasonable time to inform itself and to express its views before the district may adopt its initial proposal. In addition, new topics of negotiations must be made public within 24 hours. Any votes on such a topic must be followed within 24 hours by public disclosure of the vote of each member.<sup>48</sup> The final vote must be in public.

### Other Education Code exceptions

The Education Code governs student disciplinary meetings by boards of school districts and community college districts. District boards may hold a closed session to consider the suspension or discipline of a student if a public hearing would reveal personal, disciplinary, or academic information about the student contrary to state and federal pupil privacy law. The student's parent or guardian may request an open meeting.<sup>49</sup>

Community college districts may also hold closed sessions to discuss some student disciplinary matters, awarding of honorary degrees, or gifts from donors who prefer to remain anonymous.<sup>50</sup> Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.<sup>51</sup>

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

## Joint powers authorities

The legislative body of a joint powers authority may adopt a policy regarding limitations on disclosure of confidential information obtained in closed session, and may meet in closed session to discuss information that is subject to the policy.<sup>52</sup>

## License applicants with criminal records

A closed session is permitted when an applicant who has a criminal record applies for a license or license renewal and the legislative body wishes to discuss whether the applicant is sufficiently rehabilitated to receive the license. The applicant and the applicant's attorney are authorized to attend the closed session meeting. If the body decides to deny the license, the applicant may withdraw the application. If the applicant does not withdraw it, the body must deny the license in public, either immediately or at its next meeting. No information from the closed session can be revealed without consent of the applicant, unless the applicant takes action to challenge the denial.<sup>53</sup>

## Public security

Legislative bodies may meet in closed session to discuss matters posing a threat to the security of public buildings; essential public services, including water, sewer, gas, or electric service; or to the public's right of access to public services or facilities over which the legislative body has jurisdiction. Closed session meetings for these purposes must be held with designated security or law enforcement officials, including the Governor, Attorney General, district attorney, agency attorney, sheriff or chief of police, or their deputies or agency security consultant or security operations manager.<sup>54</sup> Action taken in closed session with respect to such public security issues is not reportable action.

## Multijurisdictional law enforcement agency

A joint powers agency formed to provide law enforcement services (involving drugs; gangs; sex crimes; firearms trafficking; felony possession of a firearm; high technology, computer, or identity theft; human trafficking; or vehicle theft) to multiple jurisdictions may hold closed sessions to discuss case records of an ongoing criminal investigation, to hear testimony from persons involved in the investigation, and to discuss courses of action in particular cases.<sup>55</sup>

The exception applies to the legislative body of the joint powers agency and to any body advisory to it. The purpose is to prevent impairment of investigations, to protect witnesses and informants, and to permit discussion of effective courses of action.<sup>56</sup>

## Hospital peer review and trade secrets

Two specific kinds of closed sessions are allowed for district hospitals and municipal hospitals under other provisions of law:<sup>57</sup>

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



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

The provision prohibits use of closed sessions to discuss transitions in ownership or management, or the district’s dissolution.<sup>58</sup>

### Other legislative bases for closed session

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

encountered topics that are authorized to be discussed by a legislative body in closed session under the Brown Act, including a response to a confidential final draft audit report from the Bureau of State Audits,<sup>59</sup> consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,<sup>60</sup> hearing a charge or complaint from a member enrolled in a health plan by a legislative body of a local agency that provides Medical services,<sup>61</sup> discussions by a county board of supervisors that governs a health plan licensed pursuant to the Knox-Keene Health Care Services Plan Act related to trade secrets or contract negotiations concerning rates of payment,<sup>62</sup> and discussions by an insurance pooling joint powers agency related to a claim filed against, or liability of, the agency or a member of the agency.<sup>63</sup>

**PRACTICE TIP:** Meetings are either open or closed. There is nothing “in between.”<sup>64</sup>

### Who may attend closed sessions

Meetings of a legislative body are either fully open or fully closed; there is nothing in between. Therefore, local agency officials and employees must pay particular attention to the authorized attendees for the particular type of closed session. As summarized above, the authorized attendees may differ based on the topic of the closed session. Closed sessions may involve only the members of the legislative body and only agency counsel, management and support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g., personnel disciplinary hearings and license hearings). In any case, individuals who do not have an official or essential role in the closed session subject matters must be excluded from closed sessions.<sup>65</sup>

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

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

## The confidentiality of closed session discussions

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality.<sup>66</sup> It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. One court has held that members of a legislative body cannot be compelled to divulge the content of closed session discussions through the discovery process.<sup>67</sup> Only the legislative body acting as a body may agree to divulge confidential closed session information. With regard to attorney-client privileged communications, the entire body is the holder of the privilege, and only the entire body can decide to waive the privilege.<sup>68</sup>

Before adoption of the Brown Act provision specifically prohibiting disclosure of closed session communications, agency attorneys and the Attorney General long opined that officials have a fiduciary duty to protect the confidentiality of closed session discussions. The Attorney General issued an opinion that it is “improper” for officials to disclose information regarding pending litigation that was received during a closed session,<sup>69</sup> though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.<sup>70</sup> In any event, in 2002, the Brown Act was amended to prescribe particular remedies for breaches of confidentiality. These remedies include injunctive relief and, if the breach is a willful disclosure of confidential information, disciplinary action against an employee and referral of a member of the legislative body to the grand jury.<sup>71</sup>

The duty of maintaining confidentiality, of course, must give way to the responsibility to disclose improper matters or discussions that may come up in closed sessions. In recognition of this public policy, under the Brown Act, a local agency may not penalize a disclosure of information learned during a closed session if the disclosure (1) is made in confidence to the district attorney or the grand jury due to a perceived violation of law; (2) is an expression of opinion concerning the propriety or legality of actions taken in closed session, including disclosure of the nature and extent of the illegal action; or (3) is information that is not confidential.<sup>72</sup>

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

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

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

*The first comment to the press may be appropriate if it is a part of an action taken by the city council in closed session that must be reported publicly.<sup>73</sup> The second comment to the property owner is not. Disclosure of confidential information acquired in closed session is expressly prohibited and harmful to the agency.*

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

## ENDNOTES

- 1 Cal. Gov. Code, § 54962.
- 2 Cal. Const. , Art. 1, § 3.
- 3 61 Ops.Cal.Atty.Gen. 220 (1978); but see Cal. Gov. Code, § 54957.8 (multijurisdictional law enforcement agencies are authorized to meet in closed session to discuss the case records of ongoing criminal investigations and other related matters).
- 4 Cal. Gov. Code, § 54957.1.
- 5 Cal. Gov. Code, § 54954.5.
- 6 Cal. Gov. Code, § 54954.2.
- 7 Cal. Gov. Code, § 54954.5.
- 8 Cal. Gov. Code, §§ 54956.9, 54957.7.
- 9 Cal. Gov. Code, § 54957.1, subd. (a).
- 10 Cal. Gov. Code, § 54957.1, subd. (b).
- 11 Cal. Gov. Code, § 54957.2.
- 12 *Hamilton v. Town of Los Gatos* (1989) 213 Cal.App.3d 1050; 2 Cal. Code Regs. § 18707.
- 13 But see *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363 (protection of the attorney-client privilege alone cannot by itself be the reason for a closed session).
- 14 Cal. Gov. Code, § 54956.9; *Shapiro v. Board of Directors of Center City Development Corp.* (2005) 134 Cal.App.4th 170 (agency must be a party to the litigation).
- 15 82 Ops.Cal.Atty.Gen. 29 (1999).
- 16 *Page v. Miracosta Community College District* (2009) 180 Cal.App.4th 471.
- 17 “*The Brown Act*,” California Attorney General (2003), p. 40.
- 18 Cal. Gov. Code, § 54956.9, subd. (g).
- 19 See e.g., *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.
- 20 *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172.
- 21 Cal. Gov. Code, § 54956.9, subd. (e).
- 22 *Fowler v. City of Lafayette* (2020) 46 Cal.App.5th 360.
- 23 Cal. Gov. Code, § 54957.1.
- 24 Cal. Gov. Code, § 54956.8.
- 25 *Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904. See also 93 Ops.Cal.Atty.Gen. 51 (2010) (redevelopment agency may not convene a closed session to discuss rehabilitation loan for a property already subleased to a loan recipient, even if the loan incorporates some of the sublease terms and includes an operating covenant governing the property); 94 Ops.Cal.Atty.Gen. 82 (2011) (real estate closed session may address form, manner, and timing of consideration and other items that cannot be disclosed without revealing price and terms).
- 26 73 Ops.Cal.Atty.Gen. 1 (1990).
- 27 Cal. Gov. Code, §§ 54956.8, 54954.5, subd. (b).
- 28 Cal. Gov. Code, § 54957.1, subd. (a)(1).
- 29 Cal. Gov. Code, § 54957, subd. (b).
- 30 63 Ops.Cal.Atty.Gen. 153 (1980); but see *Duwall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

- 31 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 85 Ops.Cal.Atty.Gen. 77 (2002).
- 32 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165; 80 Ops.Cal.Atty.Gen. 308 (1997). Interviews of candidates to fill a vacant staff position conducted by a temporary committee appointed by the governing body may be done in closed session.
- 33 Cal. Gov. Code, § 54957, subd. (b)(3).
- 34 88 Ops.Cal.Atty.Gen. 16 (2005).
- 35 *Morrison v. Housing Authority of the City of Los Angeles* (2003) 107 Cal.App.4th 860.
- 36 Cal. Gov. Code, § 54957, subd. (b); but see *Bollinger v. San Diego Civil Service Commission* (1999) 71 Cal.App.4th 568 (notice not required for closed session deliberations regarding complaints or charges when there was a public evidentiary hearing prior to closed session).
- 37 78 Ops.Cal.Atty.Gen. 218 (1995); *Bell v. Vista Unified School District* (2000) 82 Cal.App.4th 672; *Furtado v. Sierra Community College* (1998) 68 Cal.App.4th 876; *Fischer v. Los Angeles Unified School District* (1999) 70 Cal.App.4th 87.
- 38 *Moreno v. City of King* (2005) 127 Cal.App.4th 17.
- 39 Cal. Gov. Code, § 54957.
- 40 *Gillespie v. San Francisco Public Library Commission* (1998) 67 Cal.App.4th 1165.
- 41 Cal. Gov. Code, § 54957.1, subd. (a)(5).
- 42 Cal. Gov. Code, § 54957.6.
- 43 Cal. Gov. Code, § 54957.6, subd. (b); see also 98 Ops.Cal.Atty.Gen. 41 (2015) (a project labor agreement between a community college district and workers hired by contractors or subcontractors is not a proper subject of closed session for labor negotiations because the workers are not “employees” of the district).
- 44 Cal. Gov. Code, § 54957.6; 51 Ops.Cal.Atty.Gen. 201 (1968).
- 45 Cal. Gov. Code, § 54957.1, subd. (a)(6).
- 46 Cal. Gov. Code, § 3549.1.
- 47 Cal. Gov. Code, § 3540.
- 48 Cal. Gov. Code, § 3547.
- 49 Cal. Edu. Code, § 48918; but see *Rim of the World Unified School District v. Superior Court* (2003) 104 Cal.App.4th 1393 (Section 48918 preempted by the Federal Family Educational Right and Privacy Act in regard to expulsion proceedings).
- 50 Cal. Edu. Code, § 72122.
- 51 Cal. Edu. Code, § 60617.
- 52 Cal. Gov. Code, § 54956.96.
- 53 Cal. Gov. Code, § 54956.7.
- 54 Cal. Gov. Code, § 54957.
- 55 *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal. App.4th 354.
- 56 Cal. Gov. Code, § 54957.8.
- 57 Cal. Gov. Code, § 54962.
- 58 Cal. Health and Saf. Code, § 32106.
- 59 Cal. Gov. Code, § 54956.75.
- 60 Cal. Gov. Code, § 54956.81.

- 61 Cal. Gov. Code, § 54956.86.
- 62 Cal. Gov. Code, § 54956.87.
- 63 Cal. Gov. Code, § 54956.95.
- 64 Ops.Cal.Atty.Gen. 34 (1965)
- 65 82 Ops.Cal.Atty.Gen. 29 (1999); 2022 WL 1814322, 105 Ops. Cal.Atty.Gen. 89 (2022).
- 66 Cal. Gov. Code, § 54963.
- 67 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 327. See also Cal. Gov. Code, § 54963.
- 68 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363.
- 69 80 Ops.Cal.Atty.Gen. 231 (1997).
- 70 76 Ops.Cal.Atty.Gen. 289 (1993).
- 71 Cal. Gov. Code, § 54963.
- 72 Cal. Gov. Code, § 54963.
- 73 Cal. Gov. Code, § 54957.1.



# Chapter 6

## REMEDIES

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# Chapter 6

## REMEDIES



A violation of the Brown Act can lead to invalidation of the agency's action, payment of a challenger's attorney fees, public embarrassment, and even criminal prosecution. As explained below, a legislative body often has an opportunity to correct a violation prior to the filing of a lawsuit. Compliance ultimately results from regular training and a good measure of self-regulation on the part of public officials. This chapter discusses the remedies available to the public when that self-regulation is ineffective.

### Invalidation of action taken

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

- Those taken in substantial compliance with the law. No Brown Act violation is found when the given notice substantially complies with the Brown Act, even when the notice erroneously cites the wrong Brown Act section but adequately advises the public that the legislative body will meet with legal counsel to discuss potential litigation in closed session.<sup>2</sup>
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.<sup>3</sup>
- Those creating a contractual obligation, including a contract awarded by competitive bid for other than compensation for professional services, upon which a party has in good faith relied to its detriment.<sup>4</sup>
- Those connected with the collection of any tax.<sup>5</sup>
- Those in which the complaining party had actual notice at least 72 hours prior to the regular meeting or 24 hours prior to the special meeting, as the case may be, at which the action is taken.<sup>6</sup>

Before filing a court action seeking invalidation, a person who believes that a violation has occurred must send a written "cure or correct" demand to the legislative body. This demand must clearly describe the challenged action and the nature of the claimed violation. This demand must be sent within 90 days of the alleged violation, or within 30 days if the action was taken in open session but in violation of Section 54954.2, which requires (subject to specific exceptions) that a legislative body may act only on items posted on the agenda.<sup>7</sup> The legislative body then has up to 30 days to cure and correct its action.<sup>8</sup> The purpose of this requirement is to offer the body an opportunity to consider whether a violation has occurred and, if so, consider correcting the action to avoid the costs of litigation. If the legislative body does not act, any lawsuit must be filed within the next 15 days.<sup>9</sup>

Although just about anyone has standing to bring an action for invalidation,<sup>10</sup> the challenger must show prejudice as a result of the alleged violation.<sup>11</sup> An action to invalidate fails to state a cause of action against the agency if the body deliberated but did not take an action.<sup>12</sup>

### Declaratory relief to determine whether past action violated the act

Any interested person, including the district attorney, may file a civil action to determine whether a past action of a legislative body constitutes a violation of the Brown Act and is subject to a mandamus, injunction, or declaratory relief action.<sup>13</sup> Before filing an action, the interested person must, within nine months of the alleged violation of the Brown Act, submit a “cease and desist” letter to the legislative body clearly describing the past action and the nature of the alleged violation.<sup>14</sup> The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.<sup>15</sup> If the body fails to take any action within the 30-day period or takes an action other than an unconditional commitment, the interested person has 60 days to file an action.<sup>16</sup>

The legislative body’s unconditional commitment must be approved at a regular or special meeting as a separate item of business and not on the consent calendar.<sup>17</sup> The unconditional commitment must be substantially in the form set forth in the Brown Act.<sup>18</sup> No legal action may thereafter be commenced regarding the past action.<sup>19</sup> However, an action of the legislative body in violation of its unconditional commitment constitutes an independent violation of the Brown Act, and a legal action consequently may be commenced without following the procedural requirements for challenging past actions.<sup>20</sup>

The legislative body may rescind its prior unconditional commitment by a majority vote of its membership at a regular meeting as a separate item of business not on the consent calendar. At least 30 days written notice of the intended rescission must be given to each person to whom the unconditional commitment was made and to the district attorney. Upon rescission, any interested person may commence a legal action regarding the past actions without following the procedural requirements for challenging past actions.<sup>21</sup>

### Civil action to prevent future violations

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

- Stop or prevent violations or threatened violations of the Brown Act by members of the legislative body.
- Determine the applicability of the Brown Act to actions or threatened future action of the legislative body.
- Determine whether any rule or action by the legislative body to penalize or otherwise discourage the expression of one or more of its members is valid under state or federal law.
- Compel the legislative body to audio-record its closed sessions.<sup>22</sup>

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

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It is not necessary for a challenger to prove a past pattern or practice of violations by the local agency in order to obtain injunctive relief. A court may presume when issuing an injunction that a single violation will continue in the future when the public agency refuses to admit to the alleged violation or to renounce or curtail the practice.<sup>23</sup> A court may not compel elected officials to disclose their recollections of what transpired in a closed session.<sup>24</sup>

Upon finding a violation of the Brown Act pertaining to closed sessions, a court may compel the legislative body to audio record its future closed sessions.<sup>25</sup> In a subsequent lawsuit to enforce the Brown Act alleging a violation occurring in closed session, a court may upon motion of the plaintiff review the audio recording if it finds there is good cause to think the Brown Act has been violated and make public a certified transcript of the relevant portion of the closed session recording.<sup>26</sup>

### Costs and attorney's fees

A plaintiff who successfully invalidates an action taken in violation of the Brown Act or who successfully enforces one of the Brown Act's civil remedies may seek court costs and reasonable attorney's fees. Courts have held that attorney's fees must be awarded to a successful plaintiff unless special circumstances exist that would make a fee award against the public agency unjust.<sup>27</sup> When evaluating how to respond to assertions that the Brown Act has been violated, elected officials and their lawyers should assume that attorney's fees will be awarded against the agency if a violation of the Brown Act is proven.

An attorney's fee award may only be directed against the local agency and not the individual members of the legislative body. If the local agency prevails, it may be awarded court costs and attorney's fees if the court finds the lawsuit was clearly frivolous and lacking in merit.<sup>28</sup>

### Misdemeanor penalties

A violation of the Brown Act is a misdemeanor if (1) a member of the legislative body attends a meeting where action is taken in violation of the Brown Act, and (2) the member intends to deprive the public of information that the member knows or has reason to know the public is entitled to.<sup>29</sup>

"Action taken" is not only an actual vote but also a collective decision, commitment, or promise by a majority of the legislative body to make a positive or negative decision.<sup>30</sup> If the meeting involves mere deliberation without the taking of action, there can be no misdemeanor penalty.

A violation occurs for a tentative as well as final decision.<sup>31</sup> In fact, criminal liability is triggered by a member's participation in a meeting in violation of the Brown Act — not whether that member has voted with the majority or minority, or has voted at all.

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

Some attorneys and district attorneys take the position that a Brown Act violation may be pursued criminally under Government Code section 1222.<sup>32</sup> There is no case law to support this view. If anything, the existence of an express criminal remedy within the Brown Act would suggest otherwise.<sup>33</sup>

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

## Voluntary resolution

Successful enforcement actions for violations of the Brown Act can be costly to local agencies. The district attorney or even the grand jury occasionally becomes involved. Publicity surrounding alleged violations of the Brown Act can result in a loss of confidence by constituents in the legislative body and its members. It is in the agency's interest to consider re-noticing and rehearing, rather than litigating, an item of significant public interest, particularly when there is any doubt about whether the open meeting requirements were satisfied.

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



Photo credit: Courtesy of the City of West Hollywood. Photo by Jon Viscott.

## ENDNOTES

- 1 Cal. Gov. Code, § 54960.1. Invalidation is limited to actions that violate the following sections of the Brown Act: section 54953 (the basic open meeting provision), sections 54954.2 and 54954.5 (notice and agenda requirements for regular meetings and closed sessions), 54954.6 (tax hearings), 54956 (special meetings), and 54596.5 (emergency situations). Violations of sections not listed above cannot give rise to invalidation actions, but they are subject to the other remedies listed in section 54960.1.
- 2 *Castaic Lake Water Agency v. Newhall County Water District* (2015) 238 Cal.App.4th 1196, 1198.
- 3 Cal. Gov. Code, § 54960.1(d)(2).
- 4 Cal. Gov. Code, § 54960.1(d)(3).
- 5 Cal. Gov. Code, § 54960.1(d)(4).
- 6 Cal. Gov. Code, § 54960.1(d)(5).
- 7 Cal. Gov. Code, § 54960.1, subds. (b), (c)(1).
- 8 Cal. Gov. Code, § 54960.1, subd. (c)(2).
- 9 Cal. Gov. Code, § 54960.1, subd. (c)(4).
- 10 *McKee v. Orange Unified School District* (2003) 110 Cal.App.4th 1310, 1318-1319.
- 11 *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 556, 561.
- 12 *Boyle v. City of Redondo Beach* (1999) 70 Cal.App.4th 1109, 1116-17, 1118.
- 13 Cal. Gov. Code, § 54960.2, subd. (a); Senate Bill No. 1003, Section 4 (2011-2012 Session).
- 14 Cal. Gov. Code, § 54960.2, subds. (a)(1), (2).
- 15 The legislative body may provide an unconditional commitment after the 30-day period. If the commitment is made after the 30-day period, however, the plaintiff is entitled to attorneys' fees and costs. Cal. Gov. Code, § 54960.2, subd. (b).
- 16 Cal. Gov. Code, § 54960.2, subd. (a)(4).
- 17 Cal. Gov. Code, § 54960.2, subd. (c)(2).

- 18 Cal. Gov. Code, § 54960.2, subd. (c)(1).
- 19 Cal. Gov. Code, § 54960.2, subd. (c)(3).
- 20 Cal. Gov. Code, § 54960.2, subd. (d).
- 21 Cal. Gov. Code, § 54960.2, subd. (e).
- 22 Cal. Gov. Code, § 54960, subd. (a).
- 23 *California Alliance for Utility Safety and Education (CAUSE) v. City of San Diego* (1997) 56 Cal.App.4th 1024; *Common Cause v. Stirling* (1983) 147 Cal.App.3d 518, 524; *Accord Shapiro v. San Diego City Council* (2002) 96 Cal.App.4th 904, 916 and fn.6.
- 24 *Kleitman v. Superior Court* (1999) 74 Cal.App.4th 324, 334-36.
- 25 Cal. Gov. Code, § 54960, subd. (b).
- 26 Cal. Gov. Code, § 54960, subd. (c).
- 27 *Los Angeles Times Communications, LLC v. Los Angeles County Board of Supervisors* (2003) 112 Cal. App.4th 1313, 1327-29 and cases cited therein.
- 28 Cal. Gov. Code, § 54960.5.
- 29 Cal. Gov. Code, § 54959. A misdemeanor is punishable by a fine of up to \$1,000 or up to six months in county jail, or both (California Penal Code section 19). Employees of the agency who participate in violations of the Brown Act cannot be punished criminally under section 54959. However, at least one district attorney instituted criminal action against employees based on the theory that they criminally conspired with the members of the legislative body to commit a crime under section 54949.
- 30 Cal. Gov. Code, § 54952.6.
- 31 61 Ops.Cal.Atty.Gen. 283 (1978).
- 32 California Government Code section 1222 provides that “[e]very wilful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor.”
- 33 The principle of statutory construction known as *expressio unius est exclusio alterius* supports the view that section 54959 is the exclusive basis for criminal liability under the Brown Act.





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## **APPENDIX - B**

### **Oceanside Conflict of Interest Code**

ARTICLE XI. - CONFLICT OF INTEREST CODE<sup>[6]</sup>

## Sec. 2.61. - Purpose and effect.

The terms of 2 California Code of Regulations; Section 18730 et seq., and any amendments thereto duly adopted by the fair political practices commission are hereby incorporated by reference and, along with the following sections in which officials and employees are designated and disclosure categories are set forth, constitute the conflict of interest code of the City of Oceanside and any local government agency with jurisdiction wholly within the City of Oceanside.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 90-08, § 1, 2-28-90)

## Sec. 2.62. - Designated positions; disclosure categories.

Annually, the city council shall adopt a resolution indicating the employee positions and members of city boards, commissions and committees subject to conflict of interest disclosure requirements.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 86-03, § 1, 1-8-86; Ord. No. 87-12, § 1, 3-11-87; Ord. No. 88-40, § 1, 11-16-88; Ord. No. 90-08, § 2, 2-28-90; Ord. No. 91-24, § 1, 4-24-91; Ord. No. 92-08, § 1, 3-4-92)

## Sec. 2.63. - Disclosure category L.

Statements required of designated employees in disclosure category "L" shall contain all the following information:

- (a) Investments worth more than one thousand dollars (\$1,000.00) in any business entity, which within the last two (2) years has contracted with or in the future foreseeably may contract with the employer to provide services, supplies, materials, machinery or equipment to the employer and associated with the job assignment of the employee; and
- (b) Income of two hundred fifty dollars (\$250.00) or more and fifty dollars (\$50.00) or more in case of gifts which is derived from a source which within the last two (2) years has contracted with the employer or in the future foreseeably may contract with the employer to provide services, supplies, materials, machinery or equipment to the employer and associated with the job assignment of the employee.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 90-08, § 3, 2-28-90)

## Sec. 2.64. - Place and time of filing.

All designated employees shall file statements of financial interest with the city clerk who shall receive said statement on behalf of the code reviewing body. Unless otherwise required by state law, all statements of financial interest shall be deemed timely filed only when received by the city clerk on or before the following deadlines:

- (a) Annual statements shall be filed on or before April 1 of each calendar year. Such statements shall cover the period of the preceding calendar year or from the date of filing such statement as otherwise required under this code.
- (b) Initial statements shall be filed within thirty (30) days after assuming office disclosing interests held on the date of assuming office.
- (c) Leaving office statements shall be filed within thirty (30) days of leaving office. Such statements shall cover the period between the closing date of the last statement required to be filed and the date of leaving office.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 90-08, § 4, 2-28-90)

#### Sec. 2.65. - Conflict with other laws.

Nothing contained herein is intended to modify or abridge the provisions of the Political Reform Act of 1974 (Government Code Section 81000). The provisions of this code are additional to Government Code Section 87100 and other laws pertaining to conflicts of interest (including, but not limited to, Government Code Section 1090, et seq.).

(Ord. No. 83-04, § 1, 2-23-83)

#### Sec. 2.66. - Definition of terms.

In addition to terms defined in 2 California Code of Regulations, section 18730(b)(1), all references therein to "appendix" shall mean Chapter 2, Article XI of the Oceanside City Code.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 90-08, § 5, 2-28-90)

#### Sec. 2.67. - Severability.

If any section, subsection, sentence, clause or phrase of this article is for any reason held by court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this article. The city council hereby declares that it would have passed this article and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

(Ord. No. 83-04, § 1, 2-23-83)

Sec. 2.68. - Copies filed with city clerk.

Three (3) copies of the standardized conflict of interest code incorporated by this article shall be kept on file with the city clerk.

(Ord. No. 83-04, § 1, 2-23-83)

Sec. 2.69. - Interim designation by city or district manager; annual review of Code.

- (a) The city manager and manager of any local government agency with jurisdiction wholly within the City of Oceanside shall have the power to designate employees on an interim basis. Such designations shall be made if the manager determines that the employee's position entails the making or participation in the making of decisions which may foreseeably have a material effect on financial interests.
- (b) An annual review of this Code shall be made by the city council at which time interim designations may be incorporated herein.

(Ord. No. 83-04, § 1, 2-23-83; Ord. No. 90-08, § 6, 2-28-90)

Secs. 2.70—2.72. - Reserved.

## **APPENDIX - C**

# **Electronic Campaign and SEI Filing Ordinance**

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ORDINANCE NO. 14-OR0050-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER TWO, ARTICLE XII OF THE OCEANSIDE CITY CODE BY THE ADDITION OF SECTIONS 2.75 – 2.79 TO REQUIRE ONLINE OR ELECTRONIC FILING OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES AND STATEMENT OF ECONOMIC INTEREST REPORTS

WHEREAS, public access to campaign and Statement of Economic Interest disclosure information is an integral component of a fully informed electorate; and transparency is critical in order to maintain public trust and support of the political process;

WHEREAS, since the enactment of the Political Reform Act, candidates and committees have complied with filing requirements by filing paper copies of campaign statements and reports, and, in accordance with the City’s current Conflict of Interest resolutions and appendices and Government Code Section 87200, designated persons have filed Statements of Economic Interest reports;

WHEREAS, the City Clerk is the Local Filing Officer for both types of filings, and the City Clerk Department has expended a significant amount of staff time to make such paper filings readily available to the public;

WHEREAS, in July 2012, the California Legislature approved Assembly Bill 2452, which authorizes local jurisdictions to require the filing of campaign statements and reports solely in an electronic format;

WHEREAS, the elimination of manual processing of filings through electronic filing requirements will conserve resources and ensure the public has access to information disclosed in campaign statements and Statement of Economic Interest reports in a more timely manner; and

WHEREAS, the City Council finds that the electronic filing system will operate securely and effectively and will not unduly burden filers.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

SECTION 1. Chapter 2, Article XII is amended to add Sections 2.75 through 2.79 to read as follows:

1 “2.75. Online or Electronic Filing of Campaign Disclosure Statements of Economic Interest  
2 Filings.

3 The purpose of this section is to require online or electronic filing of campaign  
4 statements and require online or electronic reporting of contributions and independent  
5 expenditures regarding elections of candidates to city offices and the qualification or passage of  
6 local ballot measures within the City of Oceanside as currently required under the Political  
7 Reform Act, commencing with California Government Code Section 84200 et seq., in order to  
8 facilitate review and maximize the availability of this information to the public.

9 Additionally, this section also requires online or electronic filing of Statement of  
10 Economic Interest reports as required by the City’s current Conflict of Interest resolutions and  
11 Appendices and Government Code Section 87200.

12 “2.76. Definitions

13 Committee. Any person or combination of persons who, directly or indirectly, does any  
14 of the following:

- 15 1) Receives contributions totaling one thousand dollars (\$1,000) or more in any calendar  
16 year; or
- 17 2) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in  
18 any calendar year;

19 A person or combination of persons that becomes a committee shall retain its status as a  
20 committee until such time as that status is terminated pursuant to California Government Code  
21 Section 84214. A committee includes, but is not limited to, “Controlled Committee,”  
22 “Independent Committee,” and “General Purpose Committee.”

23 Statement of Economic Interest (SEI) Filer. Any person holding a position that is listed  
24 in California Government Code Section 87200 or any person holding a position listed in the  
25 current City of Oceanside Conflict of Interest resolutions and Appendices.

26 “2.77. Electronic Filings.

27 A) Each Elected Official, Candidate, Candidate Controlled Committee and Independent  
28 Committee that is required to file a semi-annual campaign statement, a pre-election campaign

1 statement or an amended campaign statement with the City Clerk of the City of Oceanside  
2 pursuant to Chapter 4 of the Government Code (commencing with Section 84100) and that  
3 receives a total of one thousand dollars (\$1,000) or more in Contributions or makes a total of  
4 one thousand dollars (\$1,000) or more in Independent Expenditures, shall file the statement  
5 with the City Clerk of the City of Oceanside in an electronic format.

6 B) Each person listed as a Statement of Economic Interest Filer that is required to file an  
7 assuming office, annual or leaving office statement with the City Clerk of the City of Oceanside  
8 pursuant to Government Code Section 87200 or the current City of Oceanside Conflict of  
9 Interest resolutions and appendices shall file the statement with the City Clerk of the City of  
10 Oceanside in an electronic format.

11 "2.78. Exemption from filing paper copy

12 A Candidate or Committee or Statement of Economic Interest Filer that has filed an  
13 electronic statement or report is not required to file a paper copy.

14 "2.79. Option to file electronically

15 Any Candidate or Committee not required to file an electronic statement or report under  
16 Section 2.77 may voluntarily opt to file an electronic statement or report by submitting written  
17 notice to the City Clerk. A Candidate or Committee that opts to file an electronic statement of  
18 report is not required to file a paper copy."

19 SECTION 2. Severability.

20 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be  
21 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
22 shall not affect the validity of the remaining portions of this Ordinance. The City Council  
23 hereby declares that it would have passed this ordinance and adopted this Ordinance and each  
24 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections,  
25 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

26 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this  
27 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)

28 /////

1 days after its passage in the *Union Tribune*, a newspaper of general circulation published in the  
2 City of Oceanside.

3 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
4 from and after its final passage.

5 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
6 California, held on the 22nd day of January, 2014, and, thereafter,

7 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
8 Oceanside California, held on the 5th day of February, 2014, by the following vote:

9 AYES: WOOD, FELIEN, FELLER, KERN, SANCHEZ

10 NAYS: NONE

11 ABSENT: NONE

12 ABSTAIN: NONE

13 /s/ Jim Wood  
14 MAYOR OF THE CITY OF OCEANSIDE

15 ATTEST:

APPROVED AS TO FORM:

16  
17 /s/ Zack Beck  
18 CITY CLERK

19  
20 /s/ John P. Mullen  
21 CITY ATTORNEY