

Complete Streets Commission



REGULAR MEETING AGENDA

Date: 5/14/2025
Time: 6:30 p.m.
Location: [Zoom.us/join](https://zoom.us/join) – ID# 845 2506 8381 and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Members of the public can listen to the meeting and participate using the following methods.

How to participate in the meeting

- Access the meeting, in-person, at the City Council Chambers
- Access the meeting real-time online at:
[Zoom.us/join](https://zoom.us/join) – Meeting ID 845 2506 8381
- Access the meeting real-time via telephone at:
(669) 900-6833
Meeting ID 845 2506 8381
Press *9 to raise hand to speak

Subject to Change: The format of this meeting may be altered or the meeting may be canceled. You may check on the status of the meeting by visiting the city website at menlopark.gov. The instructions for logging on to the Zoom webinar and/or the access code is subject to change. If you have difficulty accessing the Zoom webinar, please check the latest online edition of the posted agenda for updated information (menlopark.gov/agendas)

Regular Session

A. Call To Order

B. Roll Call

B1. Welcome new Commissioners – Scott Herscher and Kevin Rennie

C. Reports and Announcements

Under “Reports and Announcements,” staff and Commissioners may communicate general information of interest regarding matters within the jurisdiction of the Commission. No Commission discussion or action can occur on any of the presented items.

D. Public Comment

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under public comment for a limit of three minutes. You are not required to provide your name or City of residence, but it is helpful. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under public comment other than to provide general information.

E. Regular Business

- E1. Accept the Complete Streets Commission minutes for March 12, 2025 and April 9, 2025 ([Attachment](#))
- E2. New Commissioner onboarding ([Attachment](#))
- E3. Selection of Chair and Vice Chair
- E4. Selection of ad-hoc subcommittee for 2025-2026 work plan

F. Informational Items

- F1. Update on major project status

G. Committee/Subcommittee Reports

H. Adjournment

At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the right to address the Commission on any matters of public interest not listed on the agenda, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item. For appeal hearings, appellant and applicant shall each have 10 minutes for presentations.

If you challenge any of the items listed on this agenda in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Menlo Park at, or prior to, the public hearing.

Any writing that is distributed to a majority of the Commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available by request by emailing the city clerk at jaherren@menlopark.gov. Persons with disabilities, who require auxiliary aids or services in attending or participating in Commission meetings, may call the City Clerk's Office at 650-330-6620.

Agendas are posted in accordance with Government Code §54954.2(a) or §54956. Members of the public can view electronic agendas and staff reports by accessing the City website at menlopark.gov/agendas and can receive email notification of agenda and staff report postings by subscribing to the "Notify Me" service at menlopark.gov/subscribe. Agendas and staff reports may also be obtained by contacting City Clerk at 650-330-6620. (Posted: 5/8/2025)

REGULAR MEETING MINUTES – DRAFT



Date: 3/12/2025
Time: 6:30 p.m.
Location: Teleconference and
City Council Chambers
751 Laurel St., Menlo Park, CA 94025

Regular Session

A. Call To Order

Chair Cole called the meeting to order at 6:33 p.m.

B. Roll Call

Present: Bailey, Cebrian, Cole, Ierokomos, King
Absent: Altman, Rascoff
Staff: Senior Transportation Planner Catrine Machi, Associate Transportation Planner Casandra Cortez, Senior Transportation Engineer Kristiann Choy

C. Reports and Announcements

Staff reported out on the April 9 Complete Streets Commission meeting at the Belle Haven Community Campus (BHCC), the City Council Priority Setting Workshop March 22 and the Community Resource Fair at BHCC March 29.

D. Public Comment

None.

E. Regular Business

E1. Accept the Complete Streets Commission minutes for Feb. 12 (Attachment).

ACTION: Motion and second (Bailey / King), to accept the Complete Streets Commission minutes for Feb. 12, passed 5-0-2 (Altman, Rascoff absent).

E2. Provide feedback on the Coleman Avenue Pilot Project (Staff Report #25-001-CSC)

Staff Cortez made the presentation.

The Commission received clarification on the project history and status of the County portion of the roadway, project design elements, pilot vs. permanent design, metrics of success and methodology.

- Don Tachis spoke on concerns related to increased parking on the asphalt shoulder on Santa Monica Avenue and parked vehicles blocking access for pedestrians.
- Kevin Rennie spoke in support of the pilot project and on concerns related to the striping design,

physical separation of the bike lane via bollards, red curbs for Assembly Bill (AB) 413 Daylighting and an additional crosswalk at Santa Monica Avenue.

- Cassandra Lopez spoke in support of the pilot project and on concerns related to the implementation timeline and parking enforcement.
- Ross Silverstein spoke in support of the pilot project and a raised crosswalk on Santa Monica Avenue and spoke on concerns related to project design, traffic enforcement and metrics of success for the project.
- Nicole Angiel spoke in support of the pilot project and spoke on concerns related to parking, narrow driveways and visibility concerns.

The Commission received clarification on timing and approval process for the additional stop sign and traffic calming and bus stop placement.

The Commission took a recess at 7:20 p.m.

The Commission reconvened at 7:23 p.m.

The Commission discussed outreach on overnight parking permits, direct coordination with property managers, the feasibility of an additional crosswalk and raised crosswalks on Santa Monica and Coleman Avenues, ensuring long-term improvements follow the pilot, incorporating public feedback on long-term improvements, early enforcement of bike lane, overnight and 72-hour parking violations, clear, temporary no-parking signage and markings, transition concerns between the city and county, vertical separation, cones for temporary separation, a yellow centerline and centerline bollards, marked parking spaces south of Coleman Avenue, parking occupancy data collection later in the evening, interest in lighting for pedestrians at Santa Monica and Coleman Avenues, use of A-frames for parking changes, inclusion of near-miss data in the evaluation, expanded outreach to apartment residents about pilot changes, parking enforcement and future improvements, including a raised crosswalk, a physical barrier and the separation of the bike lane and the use of bollards in this project and throughout the city.

ACTION: Motion and second (Cole/ Cebrian), to approve a pilot project, with the following recommendations:

- Expedite the stop sign and traffic calming sooner than the pilot installation;
 - Consider temporary no parking signage and messaging, including on-site notifications, consider cones in the bike lane as a temporary physical barrier;
 - Include yellow centerline, marked parking spots and green bike lane;
 - Send outreach, pilot survey and SafeTREC website to residents and schools;
 - Include increase of pedestrian counts in metrics;
 - At the beginning of pilot coordinate with schools for messaging to students and parents and coordinate with the police department for enforcement
 - For parking counts, include later measurement, around 11 p.m.
- passed 5-0-2 (Altman, Rascoff absent).

F. Informational Items

F1. Update on major project status

The Commission received an update on the status of the El Camino Real and Ravenswood Avenue

crossing project and the status of the San Mateo County Transportation Authority grant that will fund upcoming projects on Santa Cruz Avenue, Sand Hill Road, Sharon Road/Eastridge Avenue and Oak Avenue/Oak Knoll Lane.

F2. Tentative Complete Streets Commission agenda (Attachment)

The Commission discussed the upcoming selection of a new chair and vice chair.

G. Committee/Subcommittee Reports

The Bike Parking Ad-hoc Subcommittee reported out that the resident survey regarding bicycle rack needs is complete and ready for distribution.

H. Adjournment

Chair Cole adjourned the meeting at 8:34 p.m.

Senior Transportation Planner Catrine Machi

Complete Streets Commission

REGULAR MEETING MINUTES – DRAFT



Date: 4/9/2025
Time: 6:30 p.m.
Location: Teleconference and
Belle Haven Community Campus
100 Terminal Ave., Menlo Park, CA 94025

Regular Session

A. Call To Order

Chair Cole called the meeting to order at 6:32 p.m.

B. Roll Call

Present: Altman, Cebrian, Cole, Ierokomos,
Absent: Bailey, King, Rascoff
Staff: Senior Transportation Planner Catrine Machi, Associate Transportation Planner
Casandra Cortez, Senior Transportation Engineer Kristiann Choy

C. Reports and Announcements

Staff reported out on the City Council Priority Setting Workshop.

D. Public Comment

None.

E. Regular Business

- E1. Accept the Complete Streets Commission minutes for March 12 (Attachment)

ACTION: Motion and second (King/ Cebrian), to accept the Complete Streets Commission minutes for March 12, including an update to item E2., failed 3-0-1-3 (Altman abstaining, Bailey, King and Rascoff absent).

- E2. Provide feedback on the Willow Road Bikeway and Pedestrian Improvements Project (Staff Report #25-002-CSC)

Staff Choy and Kimley-Horn and Associates Project Manager Prasanna Muthireddy made the presentation (Attachment).

The Commission received clarification on bike signals, bike detection, turn restrictions during bike signal phases, the design of ramp entrances, coordination with Willow Village development, locations of collisions, funding and status of grant applications.

The Commission expressed support for Class IV separated bikeways, bike detection and intersection improvements.

The Commission discussed concerns about lane widths, speed reduction and driver behavior impacting bike lanes.

The Commission discussed the prioritization of project phases if funding is partially secured, in-lane transit boarding and its implications for bike and pedestrian interactions, design transitions near the Veterans Affairs (VA) building and Bay Road, potential lighting improvements in the next phase of design work, design constraints at intersections and use of refuge islands; the importance of green paint and clear signage for bike visibility, children's routes to Belle Haven schools and specific intersection features, the inclusion of gutter pans in bike lane width calculations, exclusion of the frontage road from current improvements, current lane widths and Caltrans guidance and traffic behavior at key intersections such as Willow and Newbridge.

F. Informational Items

- F1. Update on major project status

None.

- F2. Tentative Complete Streets Commission agenda (Attachment)

G. Committee/Subcommittee Reports

None.

H. Adjournment

Chair Cole adjourned the meeting at 7:55 p.m.

Senior Transportation Planner Catrine Machi

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COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-24-004
Adopted Feb. 13, 2024
Resolution No. 6890



Purpose
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
Authority
Upon its original adoption, this policy replaced the document known as "Organization of Advisory Commissions of the City of Menlo Park."
Background
<p>The City of Menlo Park currently has seven active Commissions. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Commission, Housing Commission, Library Commission, Parks and Recreation Commission, and Planning Commission. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution No. 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Six of the seven commissions listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code §65100 et seq., §65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-21-0022), and a Travel, Meal, and Lodging Policy (CC-19-002), which are also applicable to all advisory bodies.</p>
Policies and Procedures
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> • Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study. • Upon its own initiative, the commission/committee shall identify and raise issues to the City Council's attention and from time to time explore pertinent matters and make recommendations to the City Council. • At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council. • Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council's adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code §65100 et seq., §65300-65401). • Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City's duly elected representatives, the City Council. • Additional or other staff support may be provided upon a formal request to the City Council. • The staff liaison shall act as the commission/committee's lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that their statements do not represent the position of the City Council. • Commission/Committee members will have mandatory training every two years regarding the Brown Act and

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parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.

- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the city clerk's office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Advisory Body Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being

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provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

City Council referrals

The city clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that they are speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

Stipends

Per Government Code §36506, the City is authorized to pay appointed Planning Commissioners by resolution. The City Council has adopted a resolution with an amount not to exceed \$200 per month per Planning Commissioner. Per the IRS (Internal Revenue Services), "public officer" also includes appointed members of advisory boards and committees and commissions. The Planning Commission stipend is taxable income and each member will receive a W-2.

Meetings and officers

1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, city manager, city attorney, city clerk and other appropriate staff, as requested.
- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if they think it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions

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of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by their signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.

3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, and Finance and Audit Commission shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month and the Finance and Audit Commission shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

The schedule of Commission meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 6:30 p.m.
- Environmental Quality Commission – Every third Wednesday at 6 p.m.
- Finance and Audit Commission – Third Thursday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month on a Monday at 7 p.m.

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that their participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

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6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

G. Memberships

Appointments/Oaths

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the city clerk or their designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

Application and selection process

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the city clerk's office and on the City's website.
- The city clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
- Applicants are required to complete and return the application form for each commission/committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by email are accepted.
- After the deadline of receipt of applications, the city clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City Council agenda packet for their review and consideration. If there are no applications received by the deadline, the city clerk will extend the application period for an indefinite period of time until sufficient applications are received.
- Upon review of the applications received, the City Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the city clerk will provide notification to the applicants of the decision of the City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City Council shall be conducted at a City Council meeting. The city clerk will ask each City Councilmember for their nominations; the number of nominations is limited to the number of vacancies. The candidate that receives a majority of nominations will be appointed. If there is a tie, multiple rounds of voting will occur.
- Following a City Council appointment, the city clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City's Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City's Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the commission/committee chair.
- An orientation will be scheduled by the city clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

Attendance

- A compilation of attendance will be submitted to the City Council at least annually listing absences for all commissions/committee members.
- Absences, which result in attendance at less than two-thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the City Council.
- Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
- While it is expected that members be present at all meetings, the chair and staff liaison should be notified if a member knows in advance that they will be absent.

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- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

Compensation

- Members shall serve without compensation (unless specifically provided) for their services, provided, however, members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-19-002).

Conflict of interest and disclosure requirements

- A Conflict of Interest Code has been updated and adopted by the City pursuant to Government Code §87300 et seq. Copies of the conflict of interest code are filed with the city clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Complete Streets Commission, Housing Commission, and Planning Commission are required to file a Statement of Economic Interest with the city clerk to disclose personal interest in investments, real property and income. This is done within 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify themselves from making or participating in a governmental decision, or using their official position to influence a governmental decision. Questions in this regard may be directed to the city attorney.

Qualifications, compositions, number

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.
- There shall be seven (7) members on each commission/committee.

Reappointments, resignations, removals

- Incumbents seeking a reappointment are required to complete and file an application with the city clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one-year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

Term of office

- Unless specified otherwise, the term of office for all commission/committees shall be four (4) years unless a resignation or a removal has taken place.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of their term, a replacement serves out the remainder of that term.

Vacancies

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are posted by the city clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code §54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the city clerk and posted in the City Council Chambers bulletin board and

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on the City's website. This list is also available to the public (Government Code §54972, Maddy Act).

Roles and Responsibilities

Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
- Continue to advocate for and advise the City Council on planning and installing pedestrian and bicycle rail crossing and safe cycling/pedestrian infrastructure.
- Continue to support City Council in ongoing initiatives to improve access to Downtown and support downtown businesses.
- Continue to support the implementation of the Safe Routes to School strategy and advocate for community engagement, program continuity and engineering implementation.
- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

Environmental Quality Commission

The Environmental Quality Commission is committed to helping the City of Menlo Park to be a leading sustainable city that inspires institutions and individuals and that is well positioned to manage present and future environmental impacts, including the grave threat of climate change. The Environmental Quality Commission is charged primarily with advising the City Council on matters involving climate change, environmental protection, and sustainability. Specific focus areas include:

- Climate Action Plan - Advise and recommend on the implementation of the climate action plan.
- Climate Resilience and Adaptation - Ensure that our most vulnerable communities have a voice in policies and programs to protect their communities from environmental impacts.
- Urban Canopy - Leverage best practices to advise/recommend on the preservation of heritage trees, city trees and expansion of the urban canopy; and make determinations on appeals of heritage tree removal permits.
- Green and Sustainable Initiatives – Support sustainability initiatives, as needs arise, which may include city-led events, habitat protection, healthy ecology, environmental health protection, healthy air, surface water runoff quality, water conservation and waste reduction.

Finance and Audit Commission

The Finance and Audit Commission is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan

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Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems. Specific focus areas include:

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning's, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

Special Advisory Bodies

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the city clerk for City Council consideration and approval.

Procedure history

Action	Date	Notes
Procedure adoption	1991	Resolution No. 3261
Procedure adoption	2001	
Procedure adoption	2011	
Procedure adoption	2013	Resolution No. 6169
Procedure adoption	2017	Resolution No. 6377
Procedure adoption	6/8/2021	Resolution No. 6631

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Procedure adoption	3/1/2022	Resolution No. 6706
Procedure adoption	3/8/2022	Resolution No. 6718
Procedure adoption	9/20/2022	Resolution No. 6776
Procedure adoption	1/10/2023	Resolution No. 6803
Procedure adoption	6/27/2023	Resolution No. 6840
Procedure adoption	2/13/2024	Resolution No. 6890

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WELCOME

The City of Menlo Park City Council, city manager and City staff are pleased that you are interested in serving your community as a member of one of the City's advisory bodies.

As a City Council-appointed resident member of a Menlo Park advisory body, you are considered a public official serving in an advisory capacity to the City Council performing a valuable service by addressing community issues and needs. City Council members look forward to your contribution as we all work together to provide efficient municipal service that is responsive to local needs and expectations. This handbook has been prepared to acquaint advisory body members with the established policies and procedures of the City Council and to assist them in understanding and carrying out their roles and responsibilities.

The City Council appreciates your willingness to work in this capacity and hopes your experience will be stimulating, enjoyable and satisfying. If you have any questions or comments, please call the city clerk's office at 650-330-6620.

GENERAL INFORMATION

The City of Menlo Park is a general law city governed by a five-member City Council elected by electoral districts to serve a four-year term. The Mayor and Vice Mayor are selected each December by majority vote of the City Council and each serve in these positions for one year. Menlo Park has a City Council-Manager form of government. Under this form of government, the City Council acts as the legislative body and is responsible for setting policies and providing overall direction for City operations. The city manager is appointed by the City Council and is responsible for ensuring these policies are implemented.

As elected representatives, City Council members provide a direct link with residents and, consequently, ensure the responsiveness of municipal activities. In order to gain a greater awareness of the sentiments of residents, the City Council also appoints advisory bodies composed of local residents familiar with the community and its needs. These advisory bodies review City programs, projects and community issues and further expand the opportunity for resident participation in City government. The input gathered by the advisory bodies facilitate informed decisions by the City Council.

This handbook is designed as an informational guide regarding the purpose, policies, roles and responsibilities to foster the successful functioning of the advisory bodies.

CITY OF MENLO PARK ADVISORY BODIES

The City of Menlo Park currently has seven active advisory bodies which are the: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Commission, Housing Commission, Library Commission, Parks and Recreation Commission and Planning Commission.

PURPOSE

Advisory bodies play an important role in city government by assisting and advising the City Council in formulating and implementing policy. Advisory bodies also develop recommendations and present supporting information to the City Council. The Environmental Quality Commission and Planning Commission have the authority to make final decisions that, if desired, can be appealed to the City Council.

The City of Menlo Park advisory bodies' roles and responsibilities are set by City Council resolution.

DUTIES

Complete Street Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
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- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

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- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974

- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan and recommend on the Housing Element of the General Plan

Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems. Specific focus areas include

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and English as a second language (ESL) programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

Established according to state law, the Planning Commission makes decisions in many areas of the land use process and also makes recommendations to the City Council in other areas:

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and zoning ordinance.
- The commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The commission is the final decision-making body for these applications, unless appealed to the City Council.
- The commission serves as a recommending body to the City Council for major subdivisions, rezoning's, conditional development permits, zoning ordinance amendments, General Plan amendments and the environmental reviews and below market rate (BMR) housing agreements associated with those projects.
- The commission works on special projects as assigned by the City Council.

RECRUITMENT PROCESS

The city clerk's office oversees the recruitment process for all City advisory bodies. Recruitment for advisory bodies vacancies begins in February/March of each year and appointments are typically made at a City Council meeting in April. Any resident interested in serving on an advisory body, who is a resident of the City and over the age of 18, is invited to apply during that time. Advisory body applications are available through the city clerk's office or on the City website. Applicants to the Planning Commission may be interviewed by the City Council as part of the recruitment and selection process. The city clerk's office communicates with all applicants with information and instructions throughout the process.

QUALIFICATIONS

To serve on a City of Menlo Park advisory body, an appointee must be a resident of the City of Menlo Park and over the age of 18. A completed application must be submitted to the city clerk's office on or before the closing of each recruitment period in order to be considered for appointment.

APPOINTMENT AND TERM OF OFFICE

Appointments to serve on a City of Menlo Park advisory body are made at a regular meeting of the City Council. Meetings are open to the public and applicants are welcome to attend but are not required to be present in order to be considered for appointment. Advisory bodies' appointments are typically four-year terms, commencing May 1 and expiring April 30. Appointees serve at the pleasure of the City Council and can be removed at any time by a majority vote of the City Council.

OATH OF OFFICE

Upon appointment to a City of Menlo Park advisory body, members shall be administered the Oath of Office by the city clerk before beginning their advisory body service.

ORIENTATION

All appointed advisory body members must attend an orientation provided by the city clerk and any additional training that may be required pursuant to State Law or City Council direction.

VACANCIES

If an unscheduled vacancy occurs, whether due to resignation, death, termination or other cause, a special vacancy notice shall be posted pursuant to Government Code §54974. An appointment to fill an unexpired term shall be for the period remaining on the unexpired term.

Following posting, the city clerk will conduct a formal recruitment in order to invite interested residents to apply for the remaining unexpired term. In the event the vacancy occurs near the time of the annual recruitment, the position will be left open and filled during the regular recruitment. Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.

OFFICERS

A chair and a vice chair are selected annually, typically in May, by the members of the advisory body. The chair serves as the presiding officer of all meetings. In the chair's absence, the vice chair serves as the presiding officer.

In the event of both being absent, the staff liaison will call the meeting to order and the members shall select a temporary chair to serve until adjournment or the arrival of the chair or vice chair.

ATTENDANCE REQUIREMENTS

For advisory bodies to function effectively and accomplish their goals, all members must be active participants. This means all members must be present at all meetings. City Council reviews the attendance report for all advisory bodies on an annual basis and may make recommendations for removal of an advisory body member for excessive absences.

When appointed, it is expected that members will attend all regular meetings of their respective advisory body. In order that the City Council is kept advised of attendance of advisory body members, the city clerk provides a report to the City Council March of each year. The City Council is also advised if a member misses one-third of meetings, and removal of a member may occur at City Council's discretion (Policy: CC-24-004).

MISSED MEETINGS

If an appointed member of an advisory body misses one-third of the meetings of the advisory body, the staff liaison shall report to the city clerk the name of the member having missed such meetings, together with the dates of the meetings at which such member was absent and the reason for such absences, if known. The city clerk shall forward the information to the City Council and removal of the member may occur at the City Council's discretion (Policy: CC-24-004).

CONFLICTS OF INTEREST

All members of City advisory bodies should avoid the appearance of bias in pending City matters at all times. Any member who has a doubt as to whether or not there is a financial interest in any decision before the advisory body should contact the city attorney's office or staff liaison before that decision.

As required by State law and the City's conflict of interest code, some appointees are required to disclose certain financial information on a Statement of Economic Interests form (Form 700) and/or advise the staff liaison of any potential conflict of interest which may arise. The city clerk will provide appointees who are included in the conflict of interest code with forms and instructions following appointment. Appointees must file these forms within 30 days of assuming office.

In accordance with Policy CC-24-004, current and future members of the Planning Commission, Complete Streets Commission and Housing Commission, are required to disclose certain financial information on a Form 700.

RESPONSIBILITIES

The primary role of the advisory body is to provide judicious advice to the City Council, the elected policymaking body of the City. The advisory body's role can include hearing public testimony on the City Council's behalf, building community consensus for proposals or projects, reviewing written materials, facilitating study of issues, guiding implementation of new or regulating established programs, assessing the alternatives regarding issues of community concern and ultimately forwarding recommendations to the City Council for its consideration.

There may be times when the advisory body's recommendations will not be sustained or will be modified by the City Council. It is important for the advisory body members to recognize that this is not a rejection of the integrity of the recommendation but is an inevitable part of the process of community decision-making. Members should be prepared for every meeting. This includes reviewing staff reports, maps, studies, proposals, correspondence, minutes, etc. before the meeting and having all referenced materials at hand during the meeting. Although it is the responsibility of the chair or vice chair to ensure that meetings proceed in a timely fashion, each member needs to do his or her part by becoming familiar with parliamentary procedures and all of the items on the agenda.

WORK PLAN

In order to respond to the ever-changing needs of the community, the City Council provides direction to staff by setting priorities at City Council meetings, taking formal actions, reviewing strategic or staffing plans, and most importantly, by review, approval and adoption of the budget. City Council actions and direction ultimately lay the foundation for all the work expected to be accomplished in that particular period.

Each advisory body will be required to develop an annual work plan that supports the goals of the City Council. The plan, once finalized by the advisory body, will be formally presented to the City Council for feedback, if any, and approval and then reported out on by the advisory body at least annually.

MEETINGS

City of Menlo Park advisory bodies are subject to State law governing open meetings and records. The California law governing open meetings is found in the California Government Code, §§54950-54962 and is popularly referred to as the “Brown Act.” The intent of the Brown Act requires that meetings of legislative bodies, including advisory bodies, be transparent and open to the public.

WHAT IS A MEETING?

The term “meeting” is very broadly defined as any congregation of a majority or quorum of the members of the advisory body at the same time and place to hear, discuss or deliberate upon any matter, which comes under the subject matter jurisdiction of the advisory body. Meetings may occur in a variety of situations.

HYBRID MEETINGS (ASSEMBLY BILL (AB) 2449)

The City offers teleconference meetings for all legislative bodies. The term “teleconference” means in-person and remote participation and “legislative bodies” mean City Council, advisory bodies, commissions, committees, and standing sub-committees.

All legislative body members are required to participate in public meetings in-person unless one of the three following occurs:

1. Traditional Brown Act requirements (Government Code §54953(b)(3))
 - a. A quorum of the legislative body must be in-person
 - i. City Council Chambers, City Hall conference room, City library, etc.
 - b. The address of where the remote legislative body member is participating from
 - i. Home address, hotel, etc.
 - c. The agenda must be posted to the door of where the remote legislative body member is participating from, in the public view
 - d. Members of the public must be allowed into the location where the remote legislative body member is participating from
 - i. If member is participating from home, then the public must be allowed access to participate in the meeting at the home of the legislative body member
2. AB 2449 “Just Cause” – can be used up to 20% of a legislative body’s regular meetings per calendar year (January – December) and cannot exceed three consecutive months
 - childcare or caregiving of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires a member to participate remotely
 - a contagious illness that prevents a member from attending in person
 - a need related to a physical or mental disability
 - travel while on business of the legislative body or another state or local agency

In order to use “Just Cause”:

- a. A quorum of the legislative body must be in-person
 - i. City Council Chambers, City Hall conference room, City library, etc.
- b. Notify your legislative body at the earliest possible opportunity of the need to participate remotely

- i. The earliest possible opportunity can be, but is not required to be, at the start of the meeting
 - c. Provide a general description of the circumstances related to one of the four items above (e.g., childcare, illness, disability, travel)
3. AB 2449 “Emergency Circumstances” – can be used up to 20% of a legislative body’s regular meetings per calendar year (January – December) and cannot exceed three consecutive meetings
- Physical or family medical emergency that prevents a legislative body member from attending in-person
 - If the regular meeting schedule is once a month: 20% = 2 meetings
 - If the regular meeting schedule is twice a month: 20% = 4 meetings

In order to use “Emergency Circumstances”:

- a. At the start of the meeting, the remote legislative body member must request that the legislative body allow them to participate remotely because of an emergency circumstance
- b. Remote legislative body member must provide a general description of the circumstances relating to the legislative body member’s need to appear remotely
 - i. This description should be 20-words or less
 - ii. The legislative body member does not have to disclose any personal medical information
- c. Remote legislative body member must also disclose whether any other people over 18 years old are present in the room and the general nature of the legislative body member’s relationship with the individual
- d. The legislative body must vote to add the emergency circumstance to the agenda for consideration
 - i. Majority vote required
- e. If approved (e.g., add the consideration of an emergency circumstance to the agenda), the legislative body must vote to approve the remote legislative body member’s participation
 - ii. These steps are required before the commencement of the business meeting

Additional rules for remote legislative body member participation

- Remote legislative body members must participate through both visual and audio
 - a. Cameras and mics engaged
- Rollcall voting required if one or more member is participating remotely
 - a. Robert’s Rules of Order (45:48) requires that:
 - i. A verbal rollcall vote be done in alphabetical order, with the presiding officer (e.g., mayor or chair) last
 - ii. Legislative body members can vote “yes”, “no”, “abstain”, or “pass”
- If “pass”, following the remainder of the rollcall vote, the vote will return to that member.

QUORUM

A majority of the number of members shall constitute a quorum for purposes of conducting business and unless otherwise posted, a majority vote of those present and voting shall be sufficient to adopt motions. As an example, an advisory body with seven members, four will qualify for a quorum. There are specific rules as to the procedure when there is a lack of a quorum in Policy CC-24-004. It is critical to advise the staff liaison and the chair, in advance, if you are not going to be able to attend the meeting.

MEETING TYPES

City advisory bodies may hold two types of meetings: regular meetings and special meetings. The staff liaison to the advisory body is responsible for identifying the type of meeting to be held and for posting all notices, including the agenda.

Regular meetings

Regular meetings are held at a set time and place specified in the procedures for that particular advisory body.

Special meetings

Special meetings may be held at a different time or place where only those issues as noted on the meeting agenda can be discussed.

MEETINGS TO AVOID

The Brown Act prohibits a majority or quorum from meeting privately. Furthermore, the Brown Act specifically prohibits “any use of direct communication, personal intermediaries or technological devices...employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on any item by the members of the legislative body.” Therefore, the prohibition extends not only to personal contacts of the advisory body members among themselves outside the public meeting, but it also prohibits “serial” meetings whereby information is ultimately exchanged among a quorum of advisory body members whether or not simultaneously in one another’s presence, for example, via email.

Face-to-face meetings

A meeting occurs whenever a majority of the members of the advisory body meets face to face to discuss, decide, or vote on an issue within its subject matter jurisdiction. The advisory body need not take any action for a gathering to be considered a “meeting.” A gathering is a “meeting” if a majority of the members of the body receives information, hears a proposal, discusses their views on an issue, or takes action on any issue under the subject matter jurisdiction of the body.

Informal gathering

A gathering need not be formally convened to be considered a “meeting,” and may occur in a variety of social situations. For example, if a majority of the members of the body has lunch together and discusses or decides matters within its subject matter jurisdiction, the gathering is a “meeting.” A meeting may arise in other contexts, such as at social gatherings where a majority of the members of the advisory body discusses any matter within the body’s subject matter jurisdiction.

Serial meetings

A meeting may also take place in situations where a majority of the members of the body does not meet face to face. The Brown Act expressly prohibits the use of devices, such as direct communication, personal intermediaries, or technological devices to develop a collective concurrence as to actions to be taken. For example, a member of the advisory body may not contact a majority of its members by telephone, email, fax, or by a third party to discuss any matter within its subject matter jurisdiction outside of the public domain. Most often, this type of a meeting occurs through a series of communications by individual members or groups smaller than a quorum that ultimately involves a majority of the members. These meetings are called serial meetings.

GATHERINGS THAT ARE NOT MEETINGS

There are six types of gatherings that are not subject to the Brown Act. If a gathering does not fall within any of the six exceptions, a majority of the members in the same room who are merely listening to a discussion of the body's business will be participating in a meeting that requires notice, an agenda, and a period for public comment.

The six exceptions are as follows:

Individual contact exception

Conversations between a member of the body and any other person that does not serve to "poll" members of the body does not constitute a meeting for purposes of the Brown Act.

Conference exception

Attendance of a majority of the members of the body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the body, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Other public meetings

Attendance of a majority of the members of the body at an open and publicized meeting organized to address a topic of local community concern by a person or organization other than the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Meetings of other legislative bodies

Attendance of a majority of the members of the body at an open and noticed meeting of another body of the local agency, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Social or ceremonial occasions

Attendance of a majority of the members of the body at a purely social or ceremonial occasion, provided a majority of the members do not discuss among themselves specific business within the body's subject matter jurisdiction.

Standing committee exception

Attendance by a majority of the members of the body at an open and noticed meeting of a standing committee of that body, provided that the members of the body who are not members of the standing committee attend only as observers.

MEETING PROTOCOL

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

ROLE AND RESPONSIBILITIES OF THE CHAIR

The chair is the presiding officer of the advisory body and shall preserve order and decorum at all meetings of the advisory body, announce each agenda item to be discussed, announce the advisory bodies decisions, and decide questions of order. The chair is responsible for ensuring the effectiveness of the group process. A good chair will facilitate the involvement of all members of the advisory body at the same time allowing for adequate public participation. In the absence of the chair, the vice chair shall act as the presiding officer.

In addition, the chair shall confine members to the question under discussion and ensure that they, as well as the balance of the advisory body, refrains from commenting or entering into conversation with speakers during public comments or during public hearings, until all speakers have been heard.

The chair shall ensure that members of the public, who address the advisory body during public comment, address matters not appearing on the agenda which are of interest to such person and which is within the jurisdiction of the advisory body.

ROLES AND RESPONSIBILITIES OF THE STAFF LIAISON

Advisory body liaisons serve as the primary point of contact and resource for the City's Council-appointed advisory bodies. The City has designated staff to act as a liaison between the advisory body and the City Council.

The City shall provide staff services to the advisory body which will include:

- Developing a rapport with the Chair and advisory body members.
- Providing a schedule of meetings to the city clerk's office and advisory body members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the advisory body on directions and priorities of the City Council.
- Informing the advisory body of events, activities, policies, programs, etc. occurring within the scope of the advisory bodies function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the advisory body.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the advisory body and notifying them of noncompliance by the advisory body or chair with City policies.
- Ensuring that agenda items approved by the advisory body are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the advisory body work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for advisory body consideration.
- Take action minutes; upon agreement of the advisory body, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes).
- Maintain a minute book with signed minutes.

CODE OF CONDUCT

The code of conduct governs the actions, deliberations of City advisory bodies so that public deliberations and actions can be conducted in an atmosphere free from personal animosity and hostility, and that all actions serve to increase public confidence in the City of Menlo Park's government.

Each member of all City advisory bodies has the duty to:

- Adhere to a high level of ethical conduct in the performance of public duties.
- Represent and work for the common good of the City.

- Pursuant to state law, refuse to accept gifts or favors or promises of future benefits that might compromise or tend to impair independent judgment or action.
- Provide fair and equal treatment for all persons and matters coming before the advisory body whether in person, in writing or in an email communication.
- Faithfully perform all duties of office.
- Learn and study the background and purpose of important items of business before voting.
- Be tolerant of all views expressed at public meetings.
- Refrain from abusive conduct, personal charges or verbal attacks upon others.
- Most importantly, advisory bodies are not to be involved in administration or operation of City departments. Advisory body members may not direct administrative staff to initiate programs, conduct major studies, or develop changes in policy without the direct approval of the City Council. City staff members are available to provide general staff assistance to the advisory body.

ESTABLISH A GOOD WORKING RELATIONSHIP WITH OTHER ADVISORY BODY MEMBERS

On many occasions, the success or failure of the efforts of an advisory body is largely dependent upon the degree of cooperation evident among the individual members of the body. In order to build a consensus around common goals and objectives, members will often have to first reconcile contradictory viewpoints and show a willingness to objectively consider the real and/or basic issues.

One way of developing this cooperation is for each advisory body member to ensure that meetings proceed in an orderly manner. The chair is primarily responsible for seeing that consideration of agenda items move along expeditiously, but with reasonable time allocated to each item. Each member can assist the chair by becoming familiar with the basic rules of parliamentary procedure and by adequately preparing any presentation to be made to the advisory body.

Other important points, which each advisory body member should consider in the relationship with other members, are:

- Always show respect for each individual's viewpoint.
- Allow other members adequate time to present their views fully before making comments.
- Be open and honest at all times.
- Recognize new members and see that they are made welcome and receive assistance in becoming acquainted with their new duties.

BE PREPARED TO VOTE

It is the responsibility of advisory body members to make adequate preparations for each meeting. Asking questions of staff before the meeting is very beneficial to the process. Being prepared will greatly assist you when it comes time to vote on an issue. If members do not participate when they do not have a genuine conflict of interest, they are not carrying out the primary job for which they were appointed.

SCOPE OF AUTHORITY

Advisory bodies are not involved in the administration or operation of City departments. Advisory body members may not direct administrative or professional staff to initiate programs and may not conduct major studies or establish policy. City staff members are available to provide general staff assistance to the advisory body.

STAFF-ADVISORY BODY RELATIONSHIP

The relationship of the advisory body members and staff is an active, continuous and nuanced one. Both advisory body members and staff are motivated by the shared goal of furthering the City's best interests. Yet, while the goal is shared, there are times when the approach and responsibility toward implementing the goal are significantly different. Some things that one body can do, the other cannot. Sometimes staff may wish to accomplish a specific goal, but due to the constraints of their employment, they may not readily be able to advance their ideas. Likewise, the advisory body members recognize their obligations to fulfill larger

objectives that staff, in their demanding workloads, may sometimes overlook. Because the distinctions in responsibility are not always explicit, cultivating a balanced understanding of your role is essential. The interaction should promote respect for different perspectives, and appreciation for each other's strengths.

AGENDAS AND MINUTES

Advisory body agendas will be prepared by staff liaisons in accordance with the requirements set forth in the Brown Act. Staff is to provide "action-only" minutes for advisory body meetings.

Agendas

The agenda is the guiding document for conducting business during advisory body meetings. The agenda lists the items to be discussed and is used to notify the public of what actions the advisory body will be considering. The chair and the staff liaison formulate agendas.

Agendas must meet the following requirements:

- The agenda must be posted in an area freely accessible to the public.
- The agenda for regular meetings must be posted at least 72 hours in advance.
- The agenda for special meetings must be posted at least 24 hours in advance with the media notified as well.
- The agenda must list a brief description of each item of business to be transacted or discussed – 20 words, unless complex [GC 54954.2(a)(1)].
- The agenda must include the meeting type, date, time and location.

Non-agenda items

A body cannot discuss or take action on any item not appearing on the agenda.

"Narrow" exceptions to the rule include:

- Briefly responding to comments made by a private person during the public comment period.
- Asking staff for clarification, requesting staff to place an item on a future agenda.
- Making a brief announcement or report regarding the member's own activities.

Additional exceptions to the non-agenda items rule include the following:

- Emergency situations that qualify for "emergency meetings."
- When two-thirds of the members of the advisory body decide there is a need to take immediate action that was brought to their attention after the agenda was posted.
- When an item was continued from a prior meeting that was posted no more than five days before the date action is taken on the item.

Minutes

The minutes are the official, permanent, legal record of the advisory body actions and proceedings.

Minutes should include the following elements:

- The minutes must record the date, time and location of the meeting.
- The minutes must record members present and members absent. If a member arrives after the meeting has been called to order or departs before the adjournment, note the time of arrival or departure.
- The approved form of minutes are action minutes. Recording discussion is not required.
- The minutes must record each vote taken by the advisory body and should account for all members (the numbers must add up).
- If a member is recused from participating in an item, the minutes must state the time the member left the room, the reason for the recusal, and the time of return to the meeting.

PROCEEDINGS

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

PREPARING MOTIONS

Advisory body meetings are usually conducted according to parliamentary procedure. The chair directs the meeting, and his/her rulings must be followed unless the body overrules them.

When a member wishes to propose an action on a particular item on the posted agenda for the advisory body to consider, the member makes a motion. A motion goes through the following steps:

1. The member asks to be recognized by the chair.
2. After being recognized, the member makes the motion: "I move that we..."
3. Another member seconds the motion: "I second the motion."
4. The chair restates the motion and asks for discussion on the motion.
5. When the chair determines that there has been enough discussion, the debate may be closed with: "Is there any further discussion?" or, if a member of the advisory body "calls for the question."
6. If no one asks for permission to speak, the chair then puts the question to a vote: "All those in favor say aye." "All those opposed say nay." The chair should restate the motion before the vote to ensure the motion is clearly understood by all. Any member may request a roll call vote on a motion.
7. After the vote, the chair announces the decision.

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

REFERENCE MATERIALS

City Council anti-harassment and non-discrimination policy #CC-21-022

City Council Commissions/committees policies and procedures, roles and responsibilities policy #CC-24-004

Travel, meal, and lodging policy #CC-24-002

Robert's Rules of Order – The Basics

League of CA Cities Guide to the Ralph M. Brown Act

ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

City Council Policy #CC-21-022

Adopted April 13, 2021



Purpose

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The City encourages all covered individuals to report – as soon as possible – any conduct that is believed to violate this Policy.

Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law to violate this Policy. A single act can violate this Policy and provide sufficient grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, elected or appointed official, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age (40 or over), sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below, will not be tolerated.

This Policy establishes a complaint procedure by which the City will investigate and resolve complaints of discrimination, harassment and retaliation by and against covered individuals. The City encourages all covered individuals to report any conduct that they believe violates this Policy as soon as possible.

This Policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to be retaliating in violation of this Policy will be subject to appropriate sanction or disciplinary action up to and including termination.

Definitions

- A. Protected classifications: This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected classification" includes race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age (40 and over), sexual orientation (including homosexuality, bisexuality, or heterosexuality), and military or veteran status, or any other basis protected by law.
- B. Policy coverage: This Policy prohibits discrimination, harassment or retaliation for the following reasons: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.
- C. Discrimination: This policy prohibits treating individuals differently and adversely because of the individual's protected classification, actual or perceived; because the individual associates with a person who is a member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy.
- D. Harassment may include, but is not limited to, the following types of behavior that is taken because of a person's protected classification. Note that harassment is not limited to conduct that City's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as elected officials, appointed officials, persons providing services under contracts, or even members of the public:
 - 1. Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.

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2. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.
 3. Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.
 4. Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.
- E. Guidelines for identifying harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:
1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification.
 2. It is no defense that the recipient "appears" to have voluntarily "consented" to the conduct at issue. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.
 3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment does not mean that the conduct is welcome. Harassment can evolve over time. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.
 4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at an individual.
 5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames, hugs, prolonged or frequent staring.)
- F. Retaliation: This policy prohibits discrimination, harassment, or retaliation because of an individual's protected activity. Protected activity includes: (1) making a request for an accommodation for a disability; (2) making a request for accommodation for religious beliefs; (3) making a complaint under this Policy; (4) opposing violations of this Policy; or (5) participating in an investigation under this Policy. Retaliation occurs when an employer takes adverse conduct against a covered individual because of the individual's protected activity as defined in this Policy. "Adverse conduct" includes but is not limited to: (1) disciplinary action; (2) counseling; (3) taking sides because an individual has reported harassment or discrimination, (4) spreading rumors about a complaint, (5) shunning and avoiding an individual who reports harassment or discrimination, or (6) making real or implied threats of intimidation to prevent or deter an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, those who associate with an individual who is involved in reporting harassment or discrimination, and those who participate in the complaint or investigation process

Complaint procedure

- A. A covered individual who believes he or she has been subjected to discrimination, harassment, or retaliation may make a complaint verbally or in writing and there is no need to follow the chain of command. Complaints may be made verbally or in writing to any of the following:
1. His or her immediate supervisor;
 2. Any supervisor or manager within or outside of the department;
 3. A department head; or
 4. A Human resources officer

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- B. Any supervisor, management employee, or department head who receives a discrimination, harassment, or retaliation complaint must notify a Human resources officer immediately.
- C. Upon receiving notification of a discrimination, harassment, or retaliation complaint, the Human resources division shall complete and/or delegate the following steps:
1. Provide the complainant with a timely response indicating that the complaint has been received and that a fair, timely, and thorough investigation will be conducted.
 2. Authorize and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint. The investigation will afford all parties with appropriate due process and include interviews with: 1) the complainant; 2) the accused harasser; and 3) other persons who have relevant knowledge concerning the allegations in the complaint.
 3. Review the factual information gathered through the investigation to reach a reasonable conclusion as to whether the alleged conduct constitutes harassment, discrimination, or retaliation giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.
 4. Report a summary of the determination as to whether this Policy has been violated to appropriate persons. If discipline is imposed, the level of discipline will not be communicated to the complainant.
 5. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.
 6. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.
 7. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
- D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.
- E. Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH.) These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed on the internet, in the government section of the telephone book or employees can check the posters that are located on City bulletin boards for office locations and telephone numbers.

Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy to the greatest extent allowed by law. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. Any individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except with his or her designated representative or as otherwise directed by a supervisor or the Human resources manager. Any individual who otherwise discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

Training

The City will provide training to all employees in accordance with applicable Federal or State law.

Employees who act in a supervisory capacity and elected officials shall receive at least two hours of classroom or other effective interactive training and education regarding sexual harassment and the negative effects of abusive conduct. All managers and supervisors must receive at least two hours of training every two years. New supervisors must receive training within six months of being hired or promoted and then at least every two years thereafter.

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All non-supervisory employees must participate in at least one hour of classroom or other effective interactive training and education regarding sexual harassment and abusive conduct within six months of assuming their positions.

Training will be presented by knowledgeable trainers or educators with expertise in the prevention of harassment, discrimination, and retaliation and will include: information and practical guidance regarding Federal and State statutory provisions concerning the prohibition against, and the prevention and correction of, sexual harassment; the remedies available to victims of sexual harassment in employment; practical examples aimed at instructing employees in the prevention of harassment, discrimination, and retaliation.

Responsibilities

Each non-manager or non-supervisor is responsible for:

- A. Treating all individuals in the workplace or on worksites with respect and consideration.
- B. Modeling behavior that conforms to this Policy.
- C. Participating in periodic training.
- D. Cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.
- E. Taking no actions to influence any potential witness while the investigation is ongoing.
- F. Reporting any act, he or she believes constitutes harassment, discrimination, or retaliation as defined in this Policy, to his or her immediate supervisor, or department head, or a human resources officer.

In addition to the responsibilities listed above, each manager and supervisor is responsible for:

- A. Informing employees of this Policy.
- B. Modeling appropriate behavior.
- C. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.
- D. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
- E. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.
- F. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.
- G. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged Policy violations.
- H. Assisting, advising, or consulting with employees and the human resources director regarding this Policy and complaint procedure.
- I. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with City personnel rules, up to and including discharge.
- J. Implementing appropriate disciplinary and remedial actions.
- K. Reporting potential violations of this Policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the human resources division or the department head.
- L. Participating in periodic training and scheduling employees for training.

ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

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Dissemination of Policy

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return acknowledging that the employee has received, read, and understands this Policy.

Procedure history

Action	Date	Notes
Procedure adoption	April 13, 2021	

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-24-004

Adopted Feb. 13, 2024

Resolution No. 6890



Purpose
To define policies and procedures and roles and responsibilities for Menlo Park appointed commissions and committees.
Authority
Upon its original adoption, this policy replaced the document known as "Organization of Advisory Commissions of the City of Menlo Park."
Background
<p>The City of Menlo Park currently has seven active Commissions. The active advisory bodies are: Complete Streets Commission, Environmental Quality Commission, Finance and Audit Commission, Housing Commission, Library Commission, Parks and Recreation Commission, and Planning Commission. Those not specified in the City Code are established by City Council ordinance or resolution. Most of these advisory bodies are established in accordance with Resolution No. 2801 and its amendments. Within specific areas of responsibility, each advisory body has a primary role of advising the City Council on policy matters or reviewing specific issues and carrying out assignments as directed by the City Council or prescribed by law.</p> <p>Six of the seven commissions listed above are advisory in nature. The Planning Commission is both advisory and regulatory and organized according to the City Code (Ch. 2.12) and State statute (Government Code §65100 et seq., §65300-65401).</p> <p>The City has an adopted Anti-Harassment and Non-Discrimination Policy (CC-21-0022), and a Travel, Meal, and Lodging Policy (CC-19-002), which are also applicable to all advisory bodies.</p>
Policies and Procedures
<p><u>Relationship to City Council, staff and media</u></p> <ul style="list-style-type: none"> • Upon referral by the City Council, the commission/committee shall study referred matters and return their recommendations and advise to the City Council. With each such referral, the City Council may authorize the City staff to provide certain designated services to aid in the study. • Upon its own initiative, the commission/committee shall identify and raise issues to the City Council's attention and from time to time explore pertinent matters and make recommendations to the City Council. • At a request of a member of the public, the commission/committee may consider appeals from City actions or inactions in pertinent areas and, if deemed appropriate, report and make recommendations to the City Council. • Each commission/committee is required to develop an annual work plan which will be the foundation for the work performed by the advisory body in support of City Council annual work plan. The plan, once finalized by a majority of the commission/committee, will be formally presented to the City Council for direction and approval no later than September 30 of each year and then reported out on by a representative of the advisory body at a regularly scheduled City Council meeting at least annually, but recommended twice a year. The proposed work plan must align with the City Council's adopted work plan. When modified, the work plan must be taken to the City Council for approval. The Planning Commission is exempt from this requirement as its functions are governed by the Menlo Park municipal code (Chapter 2.12) and State law (Government Code §65100 et seq., §65300-65401). • Commissions and committees shall not become involved in the administrative or operational matters of City departments. Members may not direct staff to initiate major programs, conduct large studies or establish department policy. City staff assigned to furnish staff services shall be available to provide general staff assistance, such as preparation of agenda/notice materials and minutes, general review of department programs and activities, and to perform limited studies, program reviews, and other services of a general staff nature. Commissions/Committees may not establish department work programs or determine department program priorities. The responsibility for setting policy and allocating scarce City resources rests with the City's duly elected representatives, the City Council. • Additional or other staff support may be provided upon a formal request to the City Council. • The staff liaison shall act as the commission/committee's lead representative to the media concerning matters before the commission/committee. Commission/Committee members should refer all media inquiries to their respective liaisons for response. Personal opinions and comments may be expressed so long as the commission/committee member clarifies that their statements do not represent the position of the City Council. • Commission/Committee members will have mandatory training every two years regarding the Brown Act and

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

City Council Policy #CC-24-004

Adopted Feb. 13, 2024

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parliamentary procedures, anti-harassment training, ethics training, and other training required by the City Council or State Law. The commission/committee members may have the opportunity for additional training, such as training for chair and vice chair. Failure to comply with the mandatory training will be reported to the City Council and may result in replacement of the member by the City Council.

- Requests from commission/committee member(s) determined by the staff liaison to take one hour or more of staff time to complete, must be directed by the City Council.

Role of City Council commission/committee liaison

City Councilmembers are assigned to serve in a liaison capacity with one or more city commission/committee. The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the City Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, City Councilmembers may elect to attend commission/committee meetings periodically to observe the activities of the advisory body or simply maintain communication with the commission/committee chair on a regular basis.

City Councilmembers should be sensitive to the fact that they are not participating members of the commission/committee, but are there rather to create a linkage between the City Council and commission/committee. In interacting with commissions/committee, City Councilmembers are to reflect the views of the City Council as a body. Being a commission/committee liaison bestows no special right with respect to commission/committee business.

Typically, assignments to commission/committee liaison positions are made at the beginning of a City Council term in December. The Mayor will ask City Councilmembers which liaison assignments they desire and will submit recommendations to the full City Council regarding the various committees, boards, and commissions which City Councilmembers will represent as a liaison. In the rare instance where more than one City Councilmember wishes to be the appointed liaison to a particular commission, a vote of the City Council will be taken to confirm appointments.

City Staff Liaison

The City has designated staff to act as a liaison between the commission/committee and the City Council. The City shall provide staff services to the commission/committee which will include:

- Developing a rapport with the Chair and commission/committee members
- Providing a schedule of meetings to the city clerk's office and commission/committee members, arranging meeting locations, maintaining the minutes and other public records of the meeting, and preparing and distributing appropriate information related to the meeting agenda.
- Advising the commission/committee on directions and priorities of the City Council.
- Informing the commission/committee of events, activities, policies, programs, etc. occurring within the scope of the commission/committee's function.
- Ensuring the city clerk is informed of all vacancies, expired terms, changes in offices, or any other changes to the commission/committee.
- Providing information to the appropriate appointed official including reports, actions, and recommendations of the committee/commission and notifying them of noncompliance by the commission/committee or chair with City policies.
- Ensuring that agenda items approved by the commission/committee are brought forth in a timely manner taking into consideration staff capacity, City Council priorities, the commission/committee work plan, and other practical matters such as the expense to conduct research or prepare studies, provided appropriate public notification, and otherwise properly prepare the item for commission/committee consideration.
- Take action minutes; upon agreement of the commission, this task may be performed by one of the members (staff is still responsible for the accuracy and formatting of the minutes)
- Maintain a minute book with signed minutes

Recommendations, requests and reports

As needed, near the beginning of City Council meetings, there will be an item called "Advisory Body Reports." At this time, commissions/committees may present recommendations or status reports and may request direction and support from the City Council. Such requests shall be communicated to the staff liaison in advance, including any written materials, so that they may be listed on the agenda and distributed with the agenda packet. The materials being

COMMISSIONS/COMMITTEES POLICIES AND PROCEDURES, ROLES AND RESPONSIBILITIES

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provided to the City Council must be approved by a majority of the commission/committee at a commission/committee meeting before submittal to the City Council. The City Council will receive such reports and recommendations and, after suitable study and discussion, respond or give direction.

City Council referrals

The city clerk shall transmit to the designated staff liaison all referrals and requests from the City Council for advice and recommendations. The commissions/committees shall expeditiously consider and act on all referrals and requests made by the City Council and shall submit reports and recommendations to the City Council on these assignments.

Public appearance of commission/committee members

When a commission/committee member appears in a non-official, non-representative capacity before the public, for example, at a City Council meeting, the member shall indicate that they are speaking only as an individual. This also applies when interacting with the media and on social media. If the commission/committee member appears as the representative of an applicant or a member of the public, the Political Reform Act may govern this appearance. In addition, in certain circumstances, due process considerations might apply to make a commission/committee member's appearance inappropriate. Conversely, when a member who is present at a City Council meeting is asked to address the City Council on a matter, the member should represent the viewpoint of the particular commission/committee as a whole (not a personal opinion).

Disbanding of advisory body

Upon recommendation by the Chair or appropriate staff, any standing or special advisory body, established by the City Council and whose members were appointed by the City Council, may be declared disbanded due to lack of business, by majority vote of the City Council.

Stipends

Per Government Code §36506, the City is authorized to pay appointed Planning Commissioners by resolution. The City Council has adopted a resolution with an amount not to exceed \$200 per month per Planning Commissioner. Per the IRS (Internal Revenue Services), "public officer" also includes appointed members of advisory boards and committees and commissions. The Planning Commission stipend is taxable income and each member will receive a W-2.

Meetings and officers

1. *Agendas/notices/minutes*

- All meetings shall be open and public and shall conduct business through published agendas, public notices and minutes and follow all of the Brown Act provisions governing public meetings. Special, canceled and adjourned meetings may be called when needed, subject to the Brown Act provisions.
- Support staff for each commission/committee shall be responsible for properly noticing and posting all regular, special, canceled and adjourned meetings. Copies of all meeting agendas, notices and minutes shall be provided to the City Council, city manager, city attorney, city clerk and other appropriate staff, as requested.
- Original agendas and minutes shall be filed and maintained by support staff in accordance with the City's adopted records retention schedule.
- The official record of the commissions/committees will be preserved by preparation of action minutes.

2. *Conduct and parliamentary procedures*

- Unless otherwise specified by State law or City regulations, conduct of all meetings shall generally follow Robert's Rules of Order.
- A majority of commission/committee members shall constitute a quorum and a quorum must be seated before official action is taken.
- The chair of each commission/committee shall preside at all meetings and the vice chair shall assume the duties of the chair when the chair is absent.
- The role of the commission/committee chair (according to Roberts Rules of Order): To open the session at the time at which the assembly is to meet, by taking the chair and calling the members to order; to announce the business before the assembly in the order in which it is to be acted upon; to recognize members entitled to the floor; to state and put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result of the vote; to protect the assembly from annoyance from evidently frivolous or dilatory motions by refusing to recognize them; to assist in the expediting of business in every compatible with the rights of the members, as by allowing brief remarks when undebatable motions are pending, if they think it advisable; to restrain the members when engaged in debate, within the rules of order, to enforce on all occasions the observance of order and decorum among the members, deciding all questions

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of order (subject to an appeal to the assembly by any two members) unless when in doubt he prefers to submit the question for the decision of the assembly; to inform the assembly when necessary, or when referred to for the purpose, on a point of order to practice pertinent to pending business; to authenticate by their signature, when necessary, all the acts, orders, and proceedings of the assembly declaring it will and in all things obeying its commands.

3. *Lack of a quorum*

- When a lack of a quorum exists at the start time of a meeting, those present will wait 15 minutes for additional members to arrive. If after 15 minutes a quorum is still not present, the meeting will be adjourned by the staff liaison due to lack of a quorum. Once the meeting is adjourned it cannot be reconvened.
- The public is not allowed to address those commissioners present during the 15 minutes the commission/committee is waiting for additional members to arrive.
- Staff can make announcements to the members during this time but must follow up with an email to all members of the body conveying the same information.
- All other items shall not be discussed with the members present as it is best to make the report when there is a quorum present.

4. *Meeting locations and dates*

- Meetings shall be held in designated City facilities, as noticed.
- All commissions/committees with the exception of the Planning Commission, and Finance and Audit Commission shall conduct regular meetings once a month. Special meetings may also be scheduled as required by the commission/committee. The Planning Commission shall hold regular meetings twice a month and the Finance and Audit Commission shall hold quarterly meetings.
- Monthly regular meetings shall have a fixed date and time established by the commission/committee. Changes to the established regular dates and times are subject to the approval of the City Council. An exception to this rule would include any changes necessitated to fill a temporary need in order for the commission/committee to conduct its meeting in a most efficient and effective way as long as proper and adequate notification is provided to the City Council and made available to the public.

The schedule of Commission meetings is as follows:

- Complete Streets Commission – Every second Wednesday at 6:30 p.m.
- Environmental Quality Commission – Every third Wednesday at 6 p.m.
- Finance and Audit Commission – Third Thursday of every quarter at 5:30 p.m.,
- Housing Commission – Every first Wednesday at 6:30 p.m.
- Library Commission – Every third Monday at 6:30 p.m.
- Parks and Recreation Commission – Every fourth Wednesday at 6:30 p.m.
- Planning Commission – Twice a month on a Monday at 7 p.m.

Each commission/committee may establish other operational policies subject to the approval of the City Council. Any changes to the established policies and procedures shall be subject to the approval of the City Council.

5. *Off-premises meeting participation*

While technology allows commission/committee members to participate in meetings from a location other than the meeting location (referred to as “off-premises”), off-premises participation is discouraged given the logistics required to ensure compliance with the Brown Act and experience with technological failures disrupting the meeting. In the event that a commission/committee member believes that their participation is essential to a meeting, the following shall apply:

- Any commission/committee member intending to participate from an off-premise location shall inform the staff liaison at least two weeks in advance of the meeting.
- The off-premise location must be identified in the notice and agenda of the meeting.
- Agendas must be posted at the off-premise location.
- The off-premise location must be accessible to the public and be ADA compliant.
- The commission/committee member participating at a duly noticed off-premises location does not count toward the quorum necessary to convene a meeting of the commission/committee.
- For any one meeting, no more than one commission/committee member may participate from an off-premise location.
- All votes must be by roll call.

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6. *Selection of chair and vice chair*

- The chair and vice chair shall be selected in May of each year by a majority of the members and shall serve for one year or until their successors are selected.
- Each commission/committee shall annually rotate its chair and vice chair.

G. Memberships

Appointments/Oaths

- The City Council is the appointing body for all commissions/committees. All members serve at the pleasure of the City Council for designated terms.
- All appointments and reappointments shall be made at a regularly scheduled City Council meeting, and require an affirmative vote of not less than a majority of the City Council present.
- Before taking office, all members must complete an Oath of Allegiance required by Article XX, §3, of the Constitution of the State of California. All oaths are administered by the city clerk or their designee.
- Appointments made during the middle of the term are for the unexpired portion of that term.

Application and selection process

- The application process begins when a vacancy occurs due to term expiration, resignation, removal or death of a member.
- The application period will normally run for a period of four weeks from the date the vacancy occurs. If there is more than one concurrent vacancy in a Commission, the application period may be extended. Applications are available from the city clerk's office and on the City's website.
- The city clerk shall notify members whose terms are about to expire whether or not they would be eligible for reappointment. If reappointment is sought, an updated application will be required.
- Applicants are required to complete and return the application form for each commission/committee they desire to serve on, along with any additional information they would like to transmit, by the established deadline. Applications sent by email are accepted.
- After the deadline of receipt of applications, the city clerk shall schedule the matter at the next available regular City Council meeting. All applications received will be submitted and made a part of the City Council agenda packet for their review and consideration. If there are no applications received by the deadline, the city clerk will extend the application period for an indefinite period of time until sufficient applications are received.
- Upon review of the applications received, the City Council reserves the right to schedule or waive interviews, or to extend the application process in the event insufficient applications are received. In either case, the city clerk will provide notification to the applicants of the decision of the City Council.
- If an interview is requested, the date and time will be designated by the City Council. Interviews are open to the public.
- The selection/appointment process by the City Council shall be conducted at a City Council meeting. The city clerk will ask each City Councilmember for their nominations; the number of nominations is limited to the number of vacancies. The candidate that receives a majority of nominations will be appointed. If there is a tie, multiple rounds of voting will occur.
- Following a City Council appointment, the city clerk shall notify successful and unsuccessful applicants accordingly, in writing. Appointees will receive copies of the City's Non-Discrimination and Sexual Harassment policies, and disclosure statements for those members who are required to file under State law as designated in the City's Conflict of Interest Code. Copies of the notification will also be distributed to support staff and the commission/committee chair.
- An orientation will be scheduled by the city clerk following an appointment (but before taking office) and a copy of this policy document will be provided at that time.

Attendance

- A compilation of attendance will be submitted to the City Council at least annually listing absences for all commissions/committee members.
- Absences, which result in attendance at less than two-thirds of their meetings during the calendar year, will be reported to the City Council and may result in replacement of the member by the City Council.
- Any member who feels that unique circumstances have led to numerous absences can appeal directly to the City Council for a waiver of this policy or to obtain a leave of absence.
- While it is expected that members be present at all meetings, the chair and staff liaison should be notified if a member knows in advance that they will be absent.

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- When reviewing commissioners for reappointment, overall attendance at full commission meetings will be given significant consideration.

Compensation

- Members shall serve without compensation (unless specifically provided) for their services, provided, however, members shall receive reimbursement for necessary travel expenses and other expenses incurred on official duty when such expenditures have been authorized by the City Council (See Policy CC-19-002).

Conflict of interest and disclosure requirements

- A Conflict of Interest Code has been updated and adopted by the City pursuant to Government Code §87300 et seq. Copies of the conflict of interest code are filed with the city clerk. Pursuant to the adopted Conflict of Interest Code, members serving on the Complete Streets Commission, Housing Commission, and Planning Commission are required to file a Statement of Economic Interest with the city clerk to disclose personal interest in investments, real property and income. This is done within 30 days of appointment and annually thereafter. A statement is also required within 30 days after leaving office.
- If a public official has a conflict of interest, the Political Reform Act may require the official to disqualify themselves from making or participating in a governmental decision, or using their official position to influence a governmental decision. Questions in this regard may be directed to the city attorney.

Qualifications, compositions, number

- In most cases, members shall be residents of the City of Menlo Park and at least 18 years of age.
- Current members of any other City commission/committee are disqualified for membership, unless the regulations for that advisory body permit concurrent membership. Commission/Committee members are strongly advised to serve out the entirety of the term of their current appointment before seeking appointment on another commission/committee.
- Commission/Committee members shall be permitted to retain membership while seeking any elective office. However, members shall not use the meetings, functions or activities of such bodies for purposes of campaigning for elective office.
- There shall be seven (7) members on each commission/committee.

Reappointments, resignations, removals

- Incumbents seeking a reappointment are required to complete and file an application with the city clerk by the application deadline. No person shall be reappointed to a commission/committee who has served on that same body for two consecutive terms; unless a period of one year has lapsed since the returning member last served on that commission/committee (the one-year period is flexible subject to City Council's discretion).
- Resignations must be submitted in writing to the city clerk, who will distribute copies to City Council and appropriate staff.
- The City Council may remove a member by a majority vote of the City Council without cause, notice or hearing.

Term of office

- Unless specified otherwise, the term of office for all commission/committees shall be four (4) years unless a resignation or a removal has taken place.
- If a person is appointed to fill an unexpired term and serves less than two years, that time will not be considered a full term. However, if a person is appointed to fill an unexpired term and serves two years or more, that time will be considered a full term.
- Terms are staggered to be overlapping four-year terms, so that all terms do not expire in any one year.
- If a member resigns before the end of their term, a replacement serves out the remainder of that term.

Vacancies

- Vacancies are created due to term expirations, resignations, removals or death.
- Vacancies are posted by the city clerk in the City Council Chambers bulletin board and on the city website.
- Whenever an unscheduled vacancy occurs in any commission/committee, a special vacancy notice shall be posted within 20 days after the vacancy occurs. Appointment shall not be made for at least 10 working days after posting of the notice (Government Code §54974).
- On or before December 31 of each year, an appointment list of all regular advisory commissions/committees of the City Council shall be prepared by the city clerk and posted in the City Council Chambers bulletin board and

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on the City's website. This list is also available to the public (Government Code §54972, Maddy Act).

Roles and Responsibilities

Complete Streets Commission

The Complete Streets Commission is charged primarily with advising the City Council on realizing the City's adopted goals for complete streets, vision zero, climate action plan, and provide input on major land use and development projects as it relates to transportation. The Complete Streets Commission's responsibilities include:

- To advance the goals of the city's newly adopted climate action plan by making alternatives to driving safer and more attractive
- Advise City Council on the implementation of the transportation master plan.
- Continue to advocate for and advise the City Council on planning and installing pedestrian and bicycle rail crossing and safe cycling/pedestrian infrastructure.
- Continue to support City Council in ongoing initiatives to improve access to Downtown and support downtown businesses.
- Continue to support the implementation of the Safe Routes to School strategy and advocate for community engagement, program continuity and engineering implementation.
- Continue to support City Council's role as a stakeholder with regard to regional multi-modal and transportation demand management programs projects to increase

Environmental Quality Commission

The Environmental Quality Commission is committed to helping the City of Menlo Park to be a leading sustainable city that inspires institutions and individuals and that is well positioned to manage present and future environmental impacts, including the grave threat of climate change. The Environmental Quality Commission is charged primarily with advising the City Council on matters involving climate change, environmental protection, and sustainability. Specific focus areas include:

- Climate Action Plan - Advise and recommend on the implementation of the climate action plan.
- Climate Resilience and Adaptation - Ensure that our most vulnerable communities have a voice in policies and programs to protect their communities from environmental impacts.
- Urban Canopy - Leverage best practices to advise/recommend on the preservation of heritage trees, city trees and expansion of the urban canopy; and make determinations on appeals of heritage tree removal permits.
- Green and Sustainable Initiatives – Support sustainability initiatives, as needs arise, which may include city-led events, habitat protection, healthy ecology, environmental health protection, healthy air, surface water runoff quality, water conservation and waste reduction.

Finance and Audit Commission

The Finance and Audit Commission is charged primarily to support delivery of timely, clear and comprehensive reporting of the City's fiscal status to the community at large. Specific focus areas include:

- Review the process for periodic financial reporting to the City Council and the public, as needed
- Review financial audit and annual financial report with the City's external auditors
- Review of the resolution of prior year audit findings
- Review of the auditor selection process and scope, as needed

Housing Commission

The Housing Commission is charged primarily with advising the City Council on housing matters including housing supply and housing related problems. Specific focus areas include:

- Community attitudes about housing (range, distribution, racial, social-economic problems)
- Programs for evaluating, maintaining, and upgrading the distribution and quality of housing stock in the City
- Planning, implementing and evaluating City programs under the Housing and Community Development Act of 1974
- Review and recommend to the City Council regarding the Below Market Rate (BMR) program
- Initiate, review and recommend on housing policies and programs for the City
- Review and recommend on housing related impacts for environmental impact reports
- Review and recommend on State and regional housing issues
- Review and recommend on the Housing Element of the General Plan

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Library Commission

The Library Commission is charged primarily with advising the City Council on matters related to the maintenance and operation of the City's libraries and library systems. Specific focus areas include:

- The scope and degree of library activities
- Maintenance and protection of City libraries
- Evaluation and improvement of library service
- Acquisition of library materials
- Coordination with other library systems and long range planning
- Literacy and ESL programs

Parks and Recreation Commission

The Parks and Recreation Commission is charged primarily with advising the City Council on matters related to City programs and facilities dedicated to recreation. Specific focus areas include:

- Those programs and facilities established primarily for the participation of and/or use by residents of the City, including adequacy and maintenance of such facilities as parks and playgrounds, recreation buildings, facilities and equipment
- Adequacy, operation and staffing of recreation programs
- Modification of existing programs and facilities to meet developing community needs
- Long range planning and regional coordination concerning park and recreational facilities

Planning Commission

The Planning Commission is organized according to State Statute.

- The Planning Commission reviews development proposals on public and private lands for compliance with the General Plan and Zoning Ordinance.
- The Commission reviews all development proposals requiring a use permit, architectural control, variance, minor subdivision and environmental review associated with these projects. The Commission is the final decision-making body for these applications, unless appealed to the City Council.
- The Commission serves as a recommending body to the City Council for major subdivisions, rezoning's, conditional development permits, Zoning Ordinance amendments, General Plan amendments and the environmental reviews and Below Market Rate (BMR) Housing Agreements associated with those projects.
- The Commission works on special projects as assigned by the City Council.

Special Advisory Bodies

The City Council has the authority to create standing committees, task forces or subcommittees for the City, and from time to time, the City Council may appoint members to these groups. The number of persons and the individual appointee serving on each group may be changed at any time by the City Council. There are no designated terms for members of these groups; members are appointed by and serve at the pleasure of the City Council.

Any requests of city commissions or committees to create such ad hoc advisory bodies shall be submitted in writing to the city clerk for City Council consideration and approval.

Procedure history

Action	Date	Notes
Procedure adoption	1991	Resolution No. 3261
Procedure adoption	2001	
Procedure adoption	2011	
Procedure adoption	2013	Resolution No. 6169
Procedure adoption	2017	Resolution No. 6377
Procedure adoption	6/8/2021	Resolution No. 6631

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Procedure adoption	3/1/2022	Resolution No. 6706
Procedure adoption	3/8/2022	Resolution No. 6718
Procedure adoption	9/20/2022	Resolution No. 6776
Procedure adoption	1/10/2023	Resolution No. 6803
Procedure adoption	6/27/2023	Resolution No. 6840
Procedure adoption	2/13/2024	Resolution No. 6890

TRAVEL, MEAL, AND LODGING POLICY

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Findings

The City of Menlo Park takes its stewardship over the use of its limited public resources seriously and public resources should only be used when there is a substantial benefit to the City.

Such benefits include the opportunity to discuss the community's concerns with regional, state and federal officials, as well as participating in regional, state and national organizations whose activities affect the City. Additionally, attending educational seminars designed to improve an official's skill and knowledge and promoting public service and morale by recognizing such service.

Legislative and other regional, state and federal agency business is frequently conducted over meals, which can provide opportunity for a more extensive, focused and uninterrupted communication about the City's policy concerns.

In the conduct of official city business, officials will be reimbursed actual meal and beverage expenses not to exceed the [federal government per diem for Menlo Park](#), before tax and gratuities. Tax and gratuities will also be reimbursed. It is important to note that each meal expenditure must comply with the limits and reporting requirements of local, state and federal law. City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

This policy provides guidance to City officials on the use and expenditure of City resources, as well as the standards against which those expenditures will be measured and satisfies the requirements of Government Code §§53232.2 and 53233.3.

This policy supplements the definition of actual and necessary expenses for purposes of state laws relating to permissible uses of public resources and the definition of necessary and reasonable expenses for purposes of federal and state income tax laws.

This policy also applies to any charges made to a City credit card, cash advances or other line of credit.

Applicability and definitions

This policy shall apply to all City officials.

City officials. City officials shall mean the City Council and/or commissions, committees and boards with decision making or advisory authority.

Authorized expenses

City funds, equipment, titles, and staff time must only be used for authorized City business. Expenses incurred in connection with the following types of activities generally constitute authorized expenses, as long as the other requirements of this policy are met:

- Communicating with representatives of regional, state and federal government on City adopted policy positions;
- Attending educational seminars designed to improve an official's skill and information levels;
- Participating in regional, state and national organizations whose activities affect the City's interests;
- Recognizing service to the City;
- Attending City events;
- Implementing a City Council approved strategy for attracting or retaining businesses to the City, which will typically involve at least one staff member.

All other expenditures require prior approval by the City Council for officials. The following expenses also require prior City Council approval:

- International travel;
- Expenses exceeding \$2,000 per trip.

Examples of organizations that host seminars, conferences, and meetings applicable to City operations and eligible for reimbursement under this policy include, but are not limited to:

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- Association of Bay Area Governments (ABAG)
- California Debt and Investment Advisory Commission (CDIAC)
- California Public Employees' Retirement System (CalPERS)
- City/County Associations of Governments of San Mateo County (C/CAG)
- Joint Venture Silicon Valley
- League of California Cities
- National League of Cities (NLC)
- San Mateo County Council of Cities
- San Mateo County Economic Development Association (SAMCEDA)
- Chamber San Mateo County
- San Mateo County Transportation Authority (SCMTA)
- Santa Clara County Cities Association
- Silicon Valley Economic Development Alliance
- Sister Cities International

Examples of personal expenses that the City will not reimburse include, but are not limited to:

- The personal portion of any trip;
- Political or charitable contributions or events;
- Family or guest expenses, including partner's expenses when accompanying a City official on agency-related business, as well as children- or pet-related expenses;
- Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other cultural events;
- Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
- Personal losses incurred while on City business.

Any questions regarding the propriety of a particular type of expense should be resolved by the approving authority before the expense is incurred.

Sister City and foreign travel

For sister or friendship city travel, any city official reimbursement requires pre-approval of the City Council. If a City Councilmember is paying for their own sister or friendship city travel, City Council travel approval is not required, but the traveling City Councilmember should inform the City Council in advance of travel.

If undertaking such travel, whether reimbursed by the City or as a personal expense, individual City Councilmembers shall not have authority to sign city-related official documents individually or on behalf of the City Council unless the document has been pre-approved by the City Council. Any foreign document submitted for signature must be translated into English.

Travel paid for by third parties

City official travel paid by third parties requires a Fair Political Practices letter pre-authorizing travel where it is unclear whether an exception to the gift or income restrictions applies.

Third parties offering travel to City officials shall be requested to provide the schedule of public appearances and shall be informed that individual city officials do not have the authority to sign official City documents unless the City Council pre-approves.

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Transportation

The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Government and group rates must be used when available.

Airfare. To identify the lowest airfare, City officials should use an online travel search engine that compares flights across major airlines. Baggage handling fees for one checked bag shall be reimbursed.

Automobile. Mileage driving using an official's personal vehicle to conduct City business shall be reimbursed at Internal Revenue Service (IRS) rates in effect on the date of travel for all miles driven in the conduct of official business in excess of the official's regular commute. The IRS rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable.

Car rental. Charges for rental vehicles may be reimbursed under this provision if the City official is attending an out of town conference, and it is determined that renting a vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation.

Ride share/taxis/shuttles. Ride share, taxis or shuttles fares may be reimbursed when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time efficiency.

Airport parking. When applicable, long-term or economy parking lots must be used for travel exceeding 24-hours.

Lodging

Lodging expenses will be reimbursed or paid for when travel on official City business reasonably requires an overnight stay. Government and group rates must be used when available.

Conferences/meetings. If lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question if such rates are available at the time of booking. If group rates are not available at time of booking, the City official shall secure the most economical lodging in close proximity of the conference/meeting venue.

Other lodging. Lodging rates that are equal to or less than government rates or the IRS per diem rates for the applicable area are presumed to be reasonable and hence reimbursable for purposes of this policy. A City official may stay with a friend or relative while attending an out-of-town meeting or conference; however, the City will not reimburse for any payment to the friend or relative for lodging, meals or transportation.

Other expenses

Internet. City officials will be reimbursed for internet access connection and/or usage fees away from home, not to exceed \$15.00 per day, if internet access is necessary for official business.

Telecommunication expenses. City officials will be reimbursed for actual telecommunication expenses incurred on City business. No reimbursement is made for use of personal cell phones.

Gratuities. Gratuities of up to 15% will be reimbursed for services customarily subject to gratuity.

Reimbursement from other entities. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

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Cash advances

From time to time, it may be necessary for a City official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the administrative services director five business days before the need for the advance with the following information:

- The purpose of the expenditure(s);
- The benefits of such expenditure(s) to the residents of Menlo Park;
- The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs and transportation expenses); and
- The dates of the expenditure(s).

After the need for the advance has occurred, the City official must submit receipts demonstrating how the cash advances were used to the administrative services director. Any unused advance must be returned to the City treasury within two business days of the City official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

Credit card use

The City does not issue credit cards to individual office holders but does have an agency credit card for selected City expenses. City officials may use the City's credit card for such purposes as airline tickets and hotel reservations by following the same procedures for cash advances. Receipts documenting expenses incurred on the City credit card and compliance with this policy must be submitted within five business days of use.

City credit cards may not be used for personal expenses, even if the City official subsequently reimburses the City.

Expense report content and submission deadline

All cash advance expenditures, credit card expenses and expense reimbursement requests must be submitted on an expense report form provided by the City. All expenses reported on the form must comply with the City's policies relating to expenses and use of public resources. The information submitted on the form is a public record. Penalties for misusing public resources and violating the City's policies include loss of reimbursement privileges, restitution, civil and criminal penalties as well as additional income tax liability.

Expense reports must document that the expense in question met the requirements of this policy. For example, if the meeting is with a legislator, the City official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.

City officials must submit their expense reports within 30 days of an expense being incurred, accompanied by receipts documenting each expense. Detailed restaurant receipts for official business meetings, in addition to any credit card receipts, are also part of the necessary documentation.

Inability to provide such documentation in a timely fashion may result in the expense being borne by the City official.

Authorization for travel and other related expenses

Attendance of City officials at conferences, seminars and meetings shall be subject to prior approval by the City Council, which occurs during the adoption of the annual budget. For out-of-state travel, the prior approval of a majority of the City Council obtained during a public meeting is required.

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Special rules for City Councilmembers

City Councilmembers will comply with the communications policy in Chapter 4 of the procedures manual when traveling for City business.

At the first City Council meeting following any meeting/conference for which a City official seeks City reimbursement, the official shall briefly report on the meeting/conference. No reimbursement shall be provided until the report is given to the City Council.

If multiple City officials attended, a joint report may be made. The report may be made verbally or in writing.

Violation of this policy

Under state law, use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

- Loss of reimbursement privileges,
- A demand for restitution to the City,
- The agency's reporting the expenses as income to the City official to state and federal tax authorities,
- Civil penalties of up to \$1,000 per day and three times the value of the resources used, and
- Prosecution for misuse of public resources.

Enforcement and cost control

All expenses are subject to audit and verification that they comply with this policy.

The administrative services director is responsible for enforcing this policy. In the event the administrative services director is uncertain as to whether a request complies with this policy, such individual must seek resolution from the requester's approving authority.

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to this policy. In the event that expenses are incurred which exceed this policy, the cost borne or reimbursed by the City will be limited to the costs that fall within this policy.

Policy history

Action	Date	Notes
Policy adoption	3/12/1991	By motion
Policy adoption	9/11/2018	Resolution No. 6460
Policy adoption	3/12/2019	Resolution No. 6485
Policy adoption	9/24/2024	Resolution No. 6934

RESOLUTION NO. 6942

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
AMENDING THE CITY'S CONFLICT OF INTEREST CODE FOR DESIGNATED
EMPLOYEES, CONSULTANTS, BOARDS, ADVISORY BODIES AND
COMMISSIONS OF THE CITY OF MENLO PARK**

WHEREAS, provisions of the Political Reform Act require local agencies to adopt and promulgate conflict of interest codes; and

WHEREAS, the Fair Political Practices Commission (FPPC) has adopted a regulation, Title 2, Division 6, California Code of Regulations §§18730 and 18750, which contains the terms of a model conflict of interest code which meets the requirements of the Political Reform Act; and

WHEREAS, Title 2 California Code of Regulations §§18730 and 18750 have been incorporated by reference in the City's Conflict of Interest Code; and

WHEREAS, the City's Conflict of Interest Code also includes Exhibit A – 2024 Conflict of Interest Code detailing the designated positions and disclosure categories; and

WHEREAS, said Exhibit A contains the listing of designated positions and disclosure categories which have been reviewed, and this review has disclosed that they should be amended to reflect current conditions; and

WHEREAS, the City of Menlo Park has previously adopted Resolution No. 6869, adopting a conflict of interest code for various City employees, consultants, boards, advisory bodies and commissions.

NOW, THEREFORE, BE IT RESOLVED that the terms of Title 2 California Code of Regulations §§18730 and 18750 and any amendments to it duly adopted by the FPPC shall, along with Exhibit A – 2024 Conflict of Interest Code for the City of Menlo Park, which are attached hereto incorporated herein by reference, in which members, employees, and consultants are designated and disclosure categories are set forth, constitute the Conflict of Interest Code of the City of Menlo Park; and

BE IT FURTHER RESOLVED that all designated members, employees, and consultants of the City of Menlo Park set forth on Exhibit A – 2024 Conflict of Interest Code shall file statements of economic interest with the City Clerk of the City of Menlo Park; and

BE IT FURTHER RESOLVED that Resolution No. 6869 be repealed by the adoption of this resolution, which shall control over prior versions.

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Resolution No. 6942
Page 2 of 5

I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the eighth day of October, 2024, by the following votes:


AYES: Combs, Nash, Taylor, Wolosin

NOES: None

ABSENT: Doerr

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this ninth day of October, 2024.

DocuSigned by:

39280A20D0BE491...

Judi A. Herren, City Clerk

Exhibits:

A. Conflict of Interest Code – 2024 update designated positions

APPENDIX
CONFLICT OF INTEREST CODE – 2024 UPDATE
DESIGNATED POSITIONS
AND DISCLOSURE OBLIGATIONS¹
ADOPTED OCT. 8, 2024

Acting/Assistant City Attorney
Advisory bodies related to land use, real property, and housing element
Administrative Services Director
Assistant Administrative Services Director
Assistant City Manager
Assistant Community Development Director – Building
Assistant Community Development Director – Planning
Assistant Library and Community Services Director
Assistant Public Works Director
Assistant Public Works Director – Engineering
Assistant Public Works Director – Maintenance
Assistant Public Works Director – Transportation
Assistant to the City Manager
Associate Planner
Building Official
Business Manager
Chief Water Operator
City Arborist
City Clerk
Community Development Director
Consultant/Contract employees
Contract Planner
Deputy City Clerk
Deputy City Manager
Deputy Community Development Director – Housing
Economic Development Manager
Engineering Services Manager
Finance and Budget Manager
Finance Director
Housing and Economic Development Manager
Housing Manager
Human Resources Director
Human Resources Manager
Human Resources Technician I
Human Resources Technician II
Information Technology Manager
Internal Services Manager
Library and Community Services Director
Library and Community Services Supervisor
Library and Community Services Manager
Management Analyst II
Network Administrator

¹ Positions covered under Government Code §87200 (City Council, Planning Commission, City Manager, City Attorney and Administrative Services Director) are not covered by the local Conflict of Interest Code.

Permit Manager
Planning Manager
Principal Planner
Police Chief
Police Commander
Principal Planner
Public Engagement Manager
Public Works Director
Public Works Superintendent
Public Works Supervisor – Facilities
Public Works Supervisor – Fleet
Public Works Supervisor – Parks
Public Works Supervisor – Streets
Public Works Supervisor – Trees
Recreation Coordinator
Revenue and Claims Manager
Senior Accountant
Senior Civil Engineer
Senior GIS Analyst
Senior Human Resources Technician
Senior Management Analyst
Senior Planner
Senior Project Manager
Senior Transportation Engineer
Senior Transportation Planner
Sustainability Manager
Transportation Consultant
Transportation Director
Transportation Manager

Consultants:

An individual is a consultant if either of the following apply:

1. the person serves in a staff capacity with the agency and in that capacity performs the same or substantially all the same duties for the agency that would otherwise be performed by a person holding a position specified or that should be specified in the City's Conflict of Interest Code; or
2. the person makes a governmental decision listed in California Code of Regulations (CCR) §18730, Title 2.

The city manager and/or the city attorney may determine in writing that a particular consultant is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure obligations in the conflict of interest code. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The city manager's and/or the city attorney's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.

Disclosure categories:

All designated employees and consultants required to file under the City of Menlo Park conflict of interest code must disclose in the following categories as defined by the Fair Political

Practices Commission (FPPC) investments and business positions in business entities, and incomes, including loans, gifts, and travel payments from sources that provide services, supplies, materials, machinery, or equipment of the type utilized by the designate position's division or department.



Robert's Rules of Order – The Basics

The purpose of “Robert’s Rules of Order” includes the following:

- Ensure majority rule
- Protect the rights of the minority, the absentees and individual members
- Provide order, fairness and decorum
- Facilitate the transaction of business and expedite meetings

Basic principles

- All members have equal rights, privileges and obligations
- Full and free discussion of every motion is a basic right
- Only one question at a time may be considered, and only one person may have the floor at any one time
- Members have a right to know what the immediately pending question is and to have it restated before a vote is taken
- No person can speak until recognized by the chair
- Personal remarks are always out of order
- A majority decides a question except when basic rights of members are involved
- Silence gives consent. Those who do not vote allow the decision to be made by those who do vote
- The chair should always remain impartial

Role of the presiding officer

- Remain impartial during debate - the presiding officer must relinquish the chair in order to debate the merits of a motion
- Introduce business in proper order
- Recognize speakers
- Determine if a motion is in order
- Keep discussion germane to the pending motion
- Maintain order
- Put motions to a vote and announce results

General procedure for handling a motion

- A member must obtain the floor by being recognized by the chair
- Member makes a main motion
- A motion must be seconded by another member before it can be considered
- If the motion is in order, the chair will restate the motion and open debate (if the motion is debatable)
- The maker of a motion has the right to speak first in debate
- The main motion is debated along with any Subsidiary motions (e.g. “I move to amend the motion by ...”, Privileged motions (e.g. “I move to postpone the motion to ...”) and

- Incidental motions (e.g. “I move to divide the question.”)
- Debate on Subsidiary, Privileged and Incidental motions (if debatable) takes precedence over debate on the main motion and must be decided before debate on the main motion can continue.
- Debate is closed when:
 - Discussion has ended, or
 - A two-thirds vote closes debate (“Call the question”)
- The chair restates the motion, and if necessary clarifies the consequences of affirmative and negative votes
- The chair calls for a vote by asking “All in favor?” Those in favor say “Aye” (touch the Green “Yes” on the screen). Then asking “All opposed?” Those opposed will say “No” (touch the Red “No” on the screen). And finally asking “All abstained?” Those abstaining will say “Aye” (ouch the Grey “Abstain” on the screen)
- The chair announces the result

General rules of debate

- No members may speak until recognized by the chair
- All discussion must be relevant to the immediately pending question
- No member can speak more than once to each motion
- No member can speak more than three minutes
- All remarks must be addressed to the chair – no cross debate is permitted
- It is not permissible to speak against one’s own motion (but one can vote against one’s own motion)
- Debate must address issues not personalities – no one is permitted to make personal attacks or question the motives of other speakers
- The presiding officer must relinquish the chair in order to participate in debate and cannot reassume the chair until the pending main question is disposed of
- When possible, the chair should let the floor alternate between those speaking in support and those speaking in opposition to the motion
- Members may not disrupt the assembly
- Rules of debate can be changed by a two-thirds vote

Robert’s Rules help get things done

- Make motions that are in order
- Obtain the floor properly
- Speak clearly and concisely
- Obey the rules of debate
- And be courteous

Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024



ACKNOWLEDGMENTS

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Open & Public VI

A GUIDE TO THE RALPH M. BROWN ACT

REVISED JANUARY 2024

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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."¹

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

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

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

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

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

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.⁴

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

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

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

The law, on the one hand, recognizes the need of individual local officials to meet and discuss matters with their constituents 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.

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.

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.⁶ Rather than simply restate the basic requirements of the Brown Act, local open meeting policies should strive to anticipate and prevent problems in areas where the Brown Act does not provide full guidance. As with the adoption of any other significant policy, public comment should be solicited.

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

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



- A local agency's right to confidentially address certain negotiations, personnel matters, claims, and litigation.
- 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.

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.

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.¹



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

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

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

- Q.** On the morning following the election to a five-member legislative body of a local agency, two successful candidates, neither an incumbent, meet with an incumbent member of the legislative body for a celebratory breakfast. Does this violate the Brown Act?
- A.** *It might, and absolutely would if the conversation turns to agency business. Even though the candidates-elect have not officially been sworn in, the Brown Act applies. If purely a social event, there is no violation, but it would be preferable if others were invited to attend to avoid the appearance of impropriety.*

- **Appointed bodies** — whether permanent or temporary, decision-making or advisory — including planning commissions, civil service commissions, and other subsidiary committees, boards, and bodies. Volunteer groups, executive search committees, task forces, and blue ribbon committees created by formal action of the governing body are legislative bodies. When the members of two or more legislative bodies are appointed to serve on an entirely separate advisory group, the resulting body may be subject to the Brown Act. In one reported case, a city council created a committee of two members of the city council and two members of the city planning commission to review qualifications of prospective planning commissioners and make recommendations to the council. The court held that their joint mission made them a legislative body subject to the Brown Act. Had the two committees remained separate and met only to exchange information and report back to their respective boards, they would have been exempt from the Brown Act.⁸
- **Standing committees** of a legislative body, irrespective of their composition, which have either (1) a continuing subject matter jurisdiction or (2) a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body.⁹ Even if it comprises less than a quorum of the governing body, a standing committee is subject to the Brown Act. For example, if a governing body creates 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.¹⁰ “Formal action” by a legislative body includes authorization given to the agency’s executive officer to appoint an advisory committee pursuant to agency-adopted policy.¹¹ 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.¹² 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.¹³ These include some nonprofit corporations created by local agencies.¹⁴ 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.¹⁵ 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.¹⁶

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.¹⁷

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.¹⁸ 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.¹⁹
- 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.²⁰

- 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.²¹
- 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.²²
- County central committees of political parties are also not Brown Act bodies.²³

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.²⁴

ENDNOTES

- 1 *Taxpayers for Livable Communities v. City of Malibu* (2005) 126 Cal.App.4th 1123, 1127.
- 2 Cal. Gov. Code, § 54952, subds. (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

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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.”¹ The term *meeting* is not limited to gatherings at which action is taken but includes deliberative gatherings as well. A hearing before an individual hearing officer is not a meeting under the Brown Act because it is not a hearing before a legislative body.²

Brown Act meetings

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

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

Six exceptions to the meeting definition

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

Individual contacts

The first exception involves individual contacts between a member of the legislative body and any other person. The Brown Act does not limit a legislative body member acting on 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.⁸ Again, the majority cannot discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within their subject matter jurisdiction. This exception allows, for example, a city council or a majority of a board of supervisors to attend a controversial meeting of the planning commission.

Nothing in the Brown Act prevents the majority of a legislative body from sitting together at such a meeting. They may choose not to, however, to preclude any possibility of improperly discussing local agency business and to avoid the appearance of a Brown Act violation. Further, aside from the Brown Act, there may be other reasons, such as due process considerations, why the members should avoid giving public testimony, 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).⁹

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.¹⁰ This is the equivalent of a seventh exception to the Brown Act's definition of a "meeting."

Collective briefings

None of these exceptions permits a majority of a legislative body to meet together with staff in advance of a meeting for a collective briefing. Any such briefings that involve a majority of the body in the same place and time must be open to the public and satisfy Brown Act meeting notice and agenda requirements. 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.¹¹



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

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

Serial meetings

One of the most frequently asked questions about the Brown Act involves serial meetings. At any one time, such meetings 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.”¹² The problem with serial meetings is the process, which deprives the public of an opportunity for meaningful observation of and participation in legislative body decision-making.

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

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

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

The Brown Act 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.¹⁵

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

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

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

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

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

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."¹⁸ Members should always be vigilant when discussing local agency business with anyone to avoid conversations that could lead to a discussion, deliberation, or action taken among the majority of the legislative body.

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

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

"Well," said Council Member Kim, "I'm leaning toward approval. I know that two of my colleagues definitely favor approval."

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.¹⁹

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.²⁰ 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.²¹ 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.”²² 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:²³

- 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.²⁴

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.²⁵

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:²⁶

- 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.²⁷

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.²⁸ 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.²⁹

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.³⁰ State law has also allowed for virtual meetings under certain emergency situations.³¹

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

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

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

awareness, among other factors.⁸ 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.

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

The agenda must state the meeting time and place and must contain “a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session.”⁹ 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.¹⁰ 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.¹¹

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.¹² 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.¹³



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).¹⁴

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.¹⁵

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.¹⁶ 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.¹⁷ 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.¹⁸

Notice requirements for emergency meetings

The special meeting notice provisions apply to emergency meetings, except for the 24-hour notice.¹⁹ 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.²⁰

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.²¹ However, they are generally consistent with the Brown Act. An item is probably void if not posted.²² 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.²³

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.²⁴ 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.²⁵ 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:²⁶

- 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.²⁷ 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.²⁸

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.²⁹ This does not mean, however, that the public is entitled to free entry to a conference attended by a majority of the legislative body.³⁰

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.³¹

Action by secret ballot, whether preliminary or final, is flatly prohibited.³²

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.³³

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.³⁴ Ejection is justified only when audience members actually disrupt the proceedings,³⁵ 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).³⁶ 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.³⁷

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.³⁸ A fee or deposit as permitted by the California Public Records Act may be charged for a copy of a public record.³⁹

- 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.⁴⁰ 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.⁴¹

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.⁴²

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.⁴³

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.⁴⁴ The agency may impose its ordinary charge for copies that is consistent with the California Public Records Act.⁴⁵

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.⁴⁶

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.⁴⁷

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.⁴⁸

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.⁴⁹ However, this prohibition does not provide immunity for defamatory statements.⁵⁰

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.⁵¹ 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.⁵²

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

speaking on the item before or during its consideration, and if the item has not been substantially changed.⁵³

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.⁵⁴

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.¹



As summarized in chapter 1 of this guide, it is clear that the Brown Act must be interpreted liberally in favor of open meetings, and exceptions that limit public access (including the exceptions for closed session meetings) must be narrowly construed.² The most common purposes of the closed session provisions in the Brown Act are to avoid revealing confidential information (e.g., prejudicing the city's position in litigation or compromising the privacy interests of employees). Closed sessions should be conducted keeping those narrow purposes in mind. It is not enough that a subject is sensitive, embarrassing, or controversial. Without specific authority in the Brown Act for a closed session, a matter to be considered by a legislative body must be discussed in public. 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.³

In this chapter, the grounds for convening a closed session are called "exceptions" because they are exceptions to the general rule that meetings must be conducted openly. In some circumstances, none of the closed session exceptions 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),⁴ the Brown Act does not authorize closed sessions for other contract negotiations.

Agendas and reports

Closed session items must be briefly described on the posted agenda, and the description must state the specific statutory exemption.⁵ An item that appears on the open meeting portion of the agenda may not be taken into closed session until it has been properly 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.⁶

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.⁷

If the legislative body intends to convene in closed session, it must include the section of the Brown Act authorizing the closed session in advance on the agenda, and it must make a public announcement prior to the closed session discussion. In most cases, the announcement may simply be a reference to the agenda item.⁸ 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.⁹ 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.¹⁰

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

Litigation

The Brown Act expressly authorizes closed sessions to discuss what is considered pending litigation.¹³ 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.¹⁴ The litigation exception under the Brown Act is narrowly construed and does not permit activities beyond a legislative body’s conferring with its own legal counsel and required support staff.¹⁵ For example, it is not permissible to hold a closed session in which settlement negotiations take place between a legislative body, a representative of an adverse party, and a mediator.¹⁶

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.

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

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

Existing litigation

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

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.²⁰

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.²¹ 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.²²



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.²³ 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.²⁴ 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.²⁵

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,²⁶ and the names of the parties with whom its negotiator may negotiate.²⁷

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.²⁸

"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.”²⁹ 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.³⁰ The body must possess the power to appoint, evaluate, or dismiss the employee to hold a closed session under this exception.³¹ That authority may be delegated to a subsidiary appointed body.³²

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,³³ 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.³⁴ The employee has the right to have the specific complaints and charges discussed in a public session rather than closed session.³⁵ If the employee is not given the 24-hour prior notice, any disciplinary action is null and void.³⁶

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.³⁷

- 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.³⁸ 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.³⁹ 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.⁴⁰ However, a report on a dismissal or non-renewal of an employment contract must be deferred until administrative remedies, if any, are exhausted.⁴¹

“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,⁴² 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.⁴³

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

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

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.⁴⁴

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.⁴⁵ 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.⁴⁶

Public participation under the Rodda Act also takes another form.⁴⁷ 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.⁴⁸ 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.⁴⁹

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.⁵⁰ Kindergarten through 12th grade districts may also meet in closed session to review the contents of the statewide assessment instrument.⁵¹

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.⁵²

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.⁵³

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.⁵⁴ 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.⁵⁵

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.⁵⁶

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:⁵⁷

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.⁵⁸

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,⁵⁹ consideration of the purchase or sale of particular pension fund investments by a legislative body of a local agency that invests pension funds,⁶⁰ 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,⁶¹ 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,⁶² 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.⁶³

PRACTICE TIP: Meetings are either open or closed. There is nothing “in between.”⁶⁴

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.⁶⁵

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.⁶⁶ 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.⁶⁷ 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.⁶⁸

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,⁶⁹ though the Attorney General has also concluded that a local agency is preempted from adopting an ordinance criminalizing public disclosure of closed session discussions.⁷⁰ 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.⁷¹

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.⁷²

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.⁷³ 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 *Duvall v. Board of Trustees* (2000) 93 Cal.App.4th 902 (board may discuss personnel evaluation criteria, process and other preliminary matters in closed session but only if related to the evaluation of a particular employee).

- 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.¹ 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.²
- Those involving the sale or issuance of notes, bonds, or other indebtedness, or any related contracts or agreements.³
- 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.⁴
- Those connected with the collection of any tax.⁵
- 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.⁶

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.⁷ The legislative body then has up to 30 days to cure and correct its action.⁸ 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.⁹

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

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.¹³ 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.¹⁴ The legislative body has 30 days after receipt of the letter to provide an unconditional commitment to cease and desist from the past action.¹⁵ 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.¹⁶

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.¹⁷ The unconditional commitment must be substantially in the form set forth in the Brown Act.¹⁸ No legal action may thereafter be commenced regarding the past action.¹⁹ 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.²⁰

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.²¹

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.²²

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

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

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.²⁵ 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.²⁶

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.²⁷ 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.²⁸

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.²⁹

"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.³⁰ 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.³¹ 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 1222.³² 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.³³

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 54956.5 (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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